THE SPEAKER PRO TEMPORE: The gentleman from Massachusetts is recognized.

MR. FRANK of Massachusetts: In the first instance, I thought the Speaker was the responsible ruler in this situation, while the Parliamentarian advised him.

THE SPEAKER PRO TEMPORE: The gentleman is correct.

§ 8. Burden of Proof on Points of Order

When a point of order is stated on the floor, the Speaker or the Chairman of the Committee of the Whole has the obligation under the rules [18] to decide the question presented.

He may be guided in making the decision by argument on the point of order, which is for the Chair's information. In deciding questions of order, the Chair is constrained to give precedent its proper respect, for one of the duties of the Chair is to preserve and enforce the authority of parliamentary law.[19]

Under the precedents interpreting various rules which create or permit a point of order, certain precepts about which party to a dispute has the burden of proof have been established.[20] When a point of order is directed at the germaneness of an amendment, for example, the burden is on the proponent of the amendment to show its relationship to the pending text.[1] On a general appropriation bill, the burden of proof that an appropriation carried in the bill has proper authorization in law falls on the committee.[2] The proponent of an amendment carrying an appropriation has the burden of showing authorization.[3] Similarly, where an amendment is offered and supported as a "limitation" on funds, it is for the proponent of the amendment to show that it does not change existing law.[4] On the other hand, a Member challenging an amendment under Rule XXI clause 5(b),[5] as a "tax measure" must show the inevitability of tax consequences to support his contention that the cited rule has been violated.[6]

Under some parts of the Congressional Budget Act, the Chair is guided in making a decision by

18. See *House Rules and Manual* (1997) Rule I clause 4 §§ 624 and 627; and Rule XXIII clause 1a § 861b.

19. See Rule I clause 4, *House Rules and Manual* § 627 (1997).

20. See, for example, Rule XVI clause 7, *House Rules and Manual* § 794 (1997); see also § 8.15, infra.

1. See 8 Cannon's Precedents § 2995; and § 8.1, infra.

2. See § 8.4, infra.

3. See § 8.11, infra.

4. See Rule XXI clause 2(f), *House Rules and Manual* § 835 (1997); and see §§ 8.4, 8.5, and 8.7, infra.

5. See *House Rules and Manual* § 846b (1997).

6. See § 8.15, infra.

estimates of costs provided by the Committees on the Budget.(7)

Burden of Proof on Question of Germaneness

§ 8.1 When a point of order is raised against an amendment on the ground that it is not germane, the burden of proof is on the proponent of the amendment to sustain the germaneness.

Where an amendment is challenged by a point of order on the ground that it is not germane, and the amendment is ambiguous and susceptible to an interpretation that would render it not germane, the Chair will sustain the point of order. Proceedings in the Committee of the Whole on June 20, 1975,(8) when an amendment was offered by Mr. Barry Goldwater, Jr., of California, illustrate the importance of drafting an amendment precisely so that it cannot be read and interpreted more broadly than intended.

> Sec. 307. The Federal Nonnuclear Energy Research and Development Act of 1974 (88 Stat. 1878; 42 U.S.C. 5901) is amended by adding at the end thereof the following new section:
>
> "Sec. 17. The Administrator shall establish, develop, acquire, and maintain a central source of information on all energy resources and technology, including proved and other reserves, for research and development purposes. This responsibility shall include the acquisition of proprietary information, by purchase, donation, or from another Federal agency, when such information will carry out the purposes of this Act. In addition the Administrator shall undertake to correlate, review, and utilize any information available to any other Government agency to further carry out the purposes of this Act. The information maintained by the Administrator shall be made available to the public, subject to the provisions of section 552 of title 5, United States Code, and section 1905 of title 18, United States Code, and to other Government agencies in a manner that will facilitate its dissemination." . . .

MR. GOLDWATER: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Goldwater: Page 43, line 6, before the period, insert the following ": *Provided* That any such proprietary information obtained by compulsory process by any Federal agency shall not be subject to the mandatory disclosure provisions of 5 U.S.C. 552 and further, where the Administrator so finds, any proprietary information obtained by other means shall be deemed to qualify for exemption from mandatory disclosure under 5 U.S.C. 552(b)(4)".

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, I reserve a point of order against the amendment offered by the gentleman from California (Mr. Goldwater).

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7. See § 8.14, infra.

8. 121 CONG. REC. 19934, 19966, 19967, 94th Cong. 1st Sess.

THE CHAIRMAN:[9] The gentleman from California (Mr. Goldwater) is recognized for approximately 1 minute.

MR. GOLDWATER: Mr. Chairman, would it be possible for us not to take up the time of this body to have the ruling on the point of order?

THE CHAIRMAN: Does the gentleman from Michigan (Mr. Dingell) wish to pursue his point of order?

MR. DINGELL: Mr. Chairman, if the gentleman wishes, I will pursue the point of order at this time.

POINT OF ORDER

MR. DINGELL: Mr. Chairman, I make a point of order against the amendment.

Mr. Chairman, the amendment is, among other things, not germane.

THE CHAIRMAN: The Chair would advise the gentleman from Michigan that the time limit pertains to the clock, and not to minutes.

MR. DINGELL: Mr. Chairman, I have asked to be heard on the point of order.

THE CHAIRMAN: And the Chair recognizes the gentleman on the point of order, and in doing so gently reminds the gentleman of the factor of time.

MR. DINGELL: Mr. Chairman, the amendment offered by the gentleman from California (Mr. Goldwater) is not germane to the legislation before us, and I am prepared to be heard on the point of order at the pleasure of the Chair.

THE CHAIRMAN: The Chair has recognized the gentleman from Michigan to make his point of order.

MR. DINGELL: The point of order is that the amendment is not germane. The amendment appears to relate to the language of the bill at page 43, line 6. In point of fact, the amendment seeks to amend the Freedom of Information Act, 5 United States Code 552, which is cited therein. It might appear that the amendment is subject to a number of different meanings. I can think of at least two at the moment, and perhaps three or four others. The first instance is that any proprietary information received by compulsory process by any Federal agency shall not be subject to the mandatory disclosure provisions of 5 United States Code 552—and I am literally quoting from the language of the amendment—and that being so, the amendment is defective as seeking to amend legislation not presently before the House and not within the jurisdiction of the particular committee that is presenting the legislation before us, and relating to entirely different matters.

It is possible that it refers to earlier legislation or, rather, refers to earlier clauses and sentences of the legislation before us. It is also possible that the legislation that the amendment would have the law amended is that once proprietary information had fallen into the hands of the Federal Government by compulsory process and had, through any methodology whatsoever, arrived in the hands of ERDA, that the original Federal agency which had ownership or custody of that information would thereupon be sterilized in making that information available pursuant to the provisions of 5 United States Code 552, the Freedom of Information Act.

In either the first instance or in the second instance the amendment seeks to amend legislation not properly be-

9. J. Edward Roush (Ind.).

fore us at this time, the Freedom of Information Act, which is not under the jurisdiction of the committee or which, by notice, has not properly been available to the Members as to the offer of this amendment.

The amendment is, therefore, in my view, on at least two of the three interpretations violative of the rules of the House, and violative of the rules of germaneness, and is subject to a point of order.

THE CHAIRMAN: Does the gentleman from California (Mr. Goldwater), desire to be heard upon the point of order?

MR. GOLDWATER: I do, Mr. Chairman. I rise in opposition to the point of order.

Mr. Chairman, I would point out to the gentleman from Michigan that if the gentleman will read the amendment it refers to not all proprietary information, but any such proprietary information, specifically narrowing it to ERDA as this particular bill addresses itself.

This amendment does not seek to amend the Freedom of Information Act, but merely to apply the Freedom of Information Act. It is, in essence, a limitation upon ERDA and as specifically authorized by the Freedom of Information Act under subsection (d), subsection (3). That this section, in other words, the Freedom of Information Act, does not apply to matters that are specifically exempted from disclosure by statute. The other statute is what, in essence, I am speaking. It is not an amendment to the Freedom of Information Act, but in essence is a limitation on the activities of ERDA, and merely applies the regulations of the Freedom of Information Act.

THE CHAIRMAN: Does the gentleman from Texas (Mr. Eckhardt) desire to be heard upon the point of order?

MR. [BOB] ECKHARDT [of Texas]: I do, Mr. Chairman. I rise to speak on the point of order.

The amendment states that any such proprietary information obtained by a compulsory process by a Federal agency shall not be subject to mandatory disclosure under the Freedom of Information Act. Such information refers back to the sentence immediately preceding the amendment in the bill on page 43, beginning in line 2:

> This responsibility shall include the acquisition of proprietary information, by purchase, donation, or from another Federal agency.

So if information is obtained from another Federal agency, and that Federal agency has obtained such by compulsory process, such purports to say that such information, wherever it may appear, is excluded from the effect of the Freedom of Information Act. The Freedom of Information Act provides that each agency in accordance with published rules shall make available for public inspection and copying any information of the type described here which appears in a final opinion or statement of policy on administrative staff manual or instructions to staff, et cetera. If that information has ultimately found its way to ERDA, it becomes such information, and under the terms of the amendment would, thus, be insulated from the Freedom of Information Act wherever it might appear. That, I think, clearly alters the Freedom of Information Act which specifically states in its last clause that the exceptions to the Freedom of Infor-

mation Act do not authorize withholding of information or limit the availability of records to the public except as specifically stated in this section.

This adds another exception, and that is the exception of information that has passed into the hands of ERDA.

If the language is ambiguous, or if it is reasonably subject to more than one construction, and if a reasonable construction of the language alters another act, then it is the burden of the person offering the amendment to clarify the amendment to make absolutely certain that the amendment does not affect the other act.

The gentleman has not done so. The language is, therefore, subject reasonably to the construction of changing processes of other agencies and is, therefore, not germane.

THE CHAIRMAN: The Chair is prepared to rule on this rather difficult question which confronts the committee at this time.

The burden of sustaining the germaneness of the amendment lies with the author. In the opinion of the Chair, the author of the amendment has not sustained that burden, and it does appear to the Chair that the amendment as presently offered would possibly mean that this restriction on the information would apply wherever the information might reside not just within ERDA. The amendment is, therefore, ambiguous and could be construed to go beyond the scope of the bill before the committee at this time.

The point of order is sustained.

In Ruling on Germaneness, the Chair Relies on the Text of the Amendment

§ 8.2 In ruling on the germaneness of an amendment, the Chair confines his analysis to its text and should not be guided by conjecture as to other legislation and administrative actions, within the jurisdiction of other committees, which might but are not required to result from adoption of the amendment.

On July 27, 1977,[10] the Committee of the Whole had under consideration the bill H.R. 7171, the Agricultural Act of 1977. An amendment was offered by Mr. Jeffords dealing with the recovery of excess food stamp benefits paid to persons whose income exceeded certain minimum requirements. During the argument on a point, Mr. Stark, a member of the Committee on Ways and Means, argued that the administration of the amendment would fall on the Internal Revenue Service, within the jurisdiction of his Committee. A portion of the argument on the germaneness point of order and

10. 123 CONG. REC. 25249, 25252, 95th Cong. 1st Sess.

the Chair's response are indicated below.

MR. [JAMES M.] JEFFORDS [of Vermont]: Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. Jeffords to the amendment offered by Mr. Foley:

In title XIII, page 28, insert after line 8 the following new section:

"RECOVERY OF BENEFITS WHERE INDIVIDUAL'S ADJUSTED GROSS INCOME FOR YEAR EXCEEDS TWICE POVERTY LEVEL

"Sec. 1210. (a)(1) If—

"(A) any individual receives food stamps during any calendar year after 1977, and

"(B) such individual's adjusted gross income for such calendar year exceeds the exempt amount,

then such individual shall be liable to pay the United States the amount determined under subsection (b) with respect to such individual for such calendar year. Such amount shall be due and payable on April 15 of the succeeding calendar year and shall be collected in accordance with the procedures prescribed pursuant to subsection (g). . . .

"(2) In the case of any individual whose taxable year is not a calendar year, this section shall be applied under regulations prescribed by the Secretary.

"(f) All funds recovered pursuant to the provisions of this section shall be deposited as miscellaneous receipts of the Treasury and shall be available to the Secretary of the Treasury to defray administrative costs incurred in carrying out the provisions of this section and shall be available to the Secretary of Agriculture to carry out the provisions of this Act in such amounts as may be specified in appropriation Acts.

"(g) The Secretary of the Treasury shall collect any liability imposed by this section in accordance with regulations prescribed by him (after consultation with the Secretary).

"(h) Nothing in this section shall be construed to affect . . . the application of any provision of the Internal Revenue Code of 1954." . . .

THE CHAIRMAN:[11] Does the gentleman from California (Mr. Stark) insist on his point of order?

MR. [FORTNEY HL (PETE)] STARK [of California]: Mr. Chairman, I reserve a point of order. I would like to engage the author of the amendment in colloquy.

Mr. Chairman, will the gentleman yield?

MR. JEFFORDS: I yield to the gentleman from California.

MR. STARK: Mr. Chairman, I would like to ask the distinguished gentleman from Vermont who or what branch of Government the gentleman feels would collect this money from the people?

MR. JEFFORDS: Under the amendment, the Department of the Treasury would be required to collect the money.

MR. STARK: It would be the Treasury Department and in no way did the gentleman intend that the Internal Revenue Service participate in any of the collection or in collecting the forms or collecting revenue?

MR. JEFFORDS: No, on the contrary, it is my understanding and belief that the Internal Revenue Service would be charged with and do the collecting.

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11. Frank E. Evans (Colo.).

MR. STARK: They would do the collecting?

MR. JEFFORDS: Yes, that is correct.

MR. STARK: Mr. Chairman, I would press my point of order.

THE CHAIRMAN: The gentleman will state the point of order.

MR. STARK: Mr. Chairman, I make a point of order that the jurisdiction of the Internal Revenue Service lies wholly within the jurisdiction of the Committee on Ways and Means.

This amendment, as the gentleman has stated it, would be counting on the Internal Revenue Service to perform the functions as put down under this amendment. The amendment would not be in order and would not be within the jurisdiction of this committee.

THE CHAIRMAN: Does the gentleman from Vermont wish to be heard?

MR. JEFFORDS: I certainly do, Mr. Chairman.

As I understand the rules here, I can ask for an amendment that can be proposed, as can anybody, to the collection. We could make the State Department or anyone else do the collection, but we cannot do what I have not done, and very specifically have not done in this amendment, which is to change any statute of the way it is done, which is under the jurisdiction of the Committee on Ways and Means. If I am wrong on this, there are so many places in this bill where the same thing is done that I do not know why a number of Members have not raised points of order.

We have asked the Postal Service to do something; we have asked the social security office to do things; we have mandated different agencies all over the place. We do not interfere with any statutes which are under committee jurisdiction of other committees. I have not done so here. The question is, do we change any statute which is under the jurisdiction of the Ways and Means Committee, and we do not. They are the guardian over those statutes, but they are not the guardian over any agency which happens to be involved with those statutes.

MR. STARK: Mr. Chairman, I think it is quite clear that the gentleman, in terms of both the committee report and in his response to questions here, in his statement on the floor that this amendment, although it really says that the Secretary of the Treasury shall collect any liability, clearly the intention is that the Internal Revenue Service shall collect W–2 forms, match them against income figures which are now under the law not to be given even to the Secretary of the Treasury, but are for collecting income tax and Internal Revenue matters.

Clearly, the intent of the amendment is to direct the Internal Revenue Service to participate in that. The jurisdiction of the Internal Revenue Service and all matters pertaining thereto is under the Committee on Ways and Means. I would ask that this amendment be ruled out of order on that basis.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from California makes the point of order that the amendment offered by the gentleman from Vermont (Mr. Jeffords) is not germane to the food stamp title of the pending bill. The thrust of the gentleman's point of order is that the collection procedure for overpayments of

food stamp benefits to persons above the poverty level involves responsibilities of the Treasury Department, and in effect mandates the establishment of regulations which would involve the disclosure of tax returns and tax information and utilization of the Internal Revenue Service—all matters within the jurisdiction of the Committee on Ways and Means.

The Chair notes that the amendment does contain the provision that "nothing in this section shall be construed to affect in any manner the application of any provision of the Internal Revenue Code of 1954," and it seems to the Chair to follow that, under the explicit provisions of the amendment. Secretary of the Treasury would therefore have to establish an independent collection procedure separate and apart from the mandated use of the Internal Revenue Service. The Chair does not have to judge the germaneness of the amendment by contemplating possible future legislative actions of the Congress not mandated by the amendment.

In the opinion of the Chair, the authority of the Secretary of the Treasury under the rules of the House as collector of overpayments of any sort is not subject explicitly and exclusively within the jurisdiction of the Committee on Ways and Means under rule X, and even if this were true, committee jurisdiction is not an exclusive test of germaneness where, as here, the basic thrust of the amendment is to modify the food stamp program—a matter now before the Committee of the Whole.

The Chair overrules the point of order.

Burden of Proof on Whether Amendment Is Germane

§ 8.3 The burden of proof is on the proponent of an amendment to establish that it is germane, and where the proponent admits to an interpretation which would render it not germane, the Chair will rule it out of order.

Argument on a point of order sometimes determines whether a point of order will be sustained or overruled by the Chair. An example of the Chair's reliance on an explanation of an amendment offered by its proponent is found in the proceedings of Dec. 11, 1979,[12] when the Committee of the Whole had under consideration the bill H.R. 4962, a bill providing Medicare services to low-income children and pregnant women. A pertinent part of the bill text follows:

STUDY AND REPORT ON EFFECTIVENESS OF HEALTH ASSURANCE PROGRAM

SEC. 14. (a)(1) The Secretary shall conduct or arrange (through grants or contracts) for the conduct of an ongoing study of the effectiveness of the child health assurance program under section 1913 of the Social Security Act. Not later than two years after the effective date prescribed by section 16(a)(1) and each two years thereafter, the Secretary shall report

12. 125 CONG. REC. 35425, 35438, 35439, 96th Cong. 1st Sess.

to Congress the results of the study and include in the report (1) the effect of preventive and primary care services on the health status of individuals under the age of 21 assessed under such program, (2) the incidence of the various disorders identified in assessments conducted under the program, and (3) the costs of identifying, in such program, such disorders.

(2) The authority of the Secretary to enter into contracts under paragraph (1) shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriations Acts.

(b) For the fiscal year ending September 30, 1981, and for each fiscal year thereafter there are authorized to be appropriated for purposes of carrying out subsection (a) an amount equal to one-eighth of 1 percent of the amount appropriated in the preceding fiscal year for payments to States under title XIX of the Social Security Act for the provision of ambulatory services for individuals under the age of 21 . . .

AMENDMENT OFFERED BY MR. PHILIP M. CRANE

MR. PHILIP M. CRANE [of Illinois]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Philip M. Crane: On page 38, following line 15, insert the following new subsection:

(2)(a) No officer, employee, or agent of the Federal Government or of an organization conducting medical reviews for purposes of carrying out the study provided for in subsection (a)(1) of this section shall inspect (or have access to) any part of an individually identifiable medical record (as described in subsection (c)) of a patient which relates to medical care not provided directly by the Federal Government or paid for (in whole or in part) under a Federal program or under a program receiving Federal financial assistance, unless the patient has authorized such disclosure and inspection in accordance with subsection (b).

(b) A patient authorizes disclosure and inspection of a medical record for purposes of subsection (a) only if, in a signed and dated statement, he—

(1) authorizes the disclosure and inspection for a specific period of time;

(2) identifies the medical record authorized to be disclosed and inspected; and

(3) specifies the agencies which may inspect the record and to which the record may be disclosed.

(c) For purposes of this section:

(1) The term "individually identifiable medical record" means a medical, psychiatric, or dental record concerning an individual that is in a form which either identifies the individual or permits identification of the individual through means (whether direct or indirect) available to the public.

(2) The term "medical care" includes preventive and primary medical, psychiatric, and dental assessments, care and treatment.

MR. [HENRY A.] WAXMAN [of California]: Mr. Chairman, I reserve a point of order on the amendment. . . .

THE CHAIRMAN:[13] Does the gentleman from California (Mr. Waxman) insist upon his point of order?

MR. WAXMAN: I would like a clarification, Mr. Chairman, if I might, before I pursue whether I have a point of order.

THE CHAIRMAN: The gentleman from California reserves his point of order, and the gentleman is recognized for his remaining time under the allocation.

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13. Bruce F. Vento (Minn.).

MR. WAXMAN: I would like to make an inquiry of the gentleman from Illinois (Mr. Philip M. Crane) who has offered the amendment, if I might. The section (2)(a) on page 38 following line 15 as it would be inserted by this amendment says:

> No officer, employee, or agent of the Federal Government or of an organization conducting medical reviews for purposes of carrying out the study provided for in subsection (a)(1) of this section shall inspect (or have access to). . . .

Is this a parenthetical clause: "Or of an organization conducting medical reviews for purposes of carrying out the study provided for," or are we also referring only to the officers, employees, or agents of the Federal Government who are conducting medical reviews for purposes of carrying out the study?

MR. PHILIP M. CRANE: If the gentleman will yield, the reason for the seeming redundancy of language was to guarantee that there would not be any commission or what I would classify as an agent, but which might be open to some debate, or group of private individuals performing a function under the auspices of the Federal Government. I would define that as an agent and, therefore, that language would be, then, redundant to that extent. My concern is quibbling over fine points of definitions, and to the extent that there is a potential here for some private group with the full authority of the Federal Government to conduct these kinds of studies, I want to make sure that those do not in any way have the possibility of falling into the hands of Government officials without the written consent of the patient involved.

MR. WAXMAN: If I might further inquire, is it fair to say that the limitation, "No officer, employee, or agent of the Federal Government" pertains specifically to the carrying out of the study provided for in subsection (a)(1)? Is it specifically addressed to carrying out that study?

MR. PHILIP M. CRANE: In the process of carrying out the study, my understanding is there is a potential for examination, obviously, of medical records, and to the extent there is, then I think if they are identifiable medical records, the potential exists for those to come into the hands of Government officials unbeknownst to the patient.

MR. WAXMAN: But I am trying to ascertain whether it is limited to carrying out the study provided for in subsection (a)(1) and the medical records are viewed only for the purpose of carrying out that study.

MR. PHILIP M. CRANE: Does the gentleman mean is it confined to that?

MR. WAXMAN: Yes.

MR. PHILIP M. CRANE: No, it is not. That would not be my understanding of the amendment.

THE CHAIRMAN: Does the gentleman from California (Mr. Waxman) insist on his point of order?

MR. WAXMAN: Mr. Chairman, I am going to pursue my point of order, then.

THE CHAIRMAN: The gentleman will state his point of order.

MR. WAXMAN: Mr. Chairman, as I read this section without the limitation that I tried to determine was included there, I believe it is overly broad and, therefore, not germane, and I make a point of order of the fact that it is not germane to the bill before us.

THE CHAIRMAN: Does the gentleman from Illinois (Mr. Philip M. Crane) wish to be heard on the point of order?

MR. PHILIP M. CRANE: I do, Mr. Chairman. I think it is, indeed, germane because, Mr. Chairman, the language of the amendment, I think, addresses the specific narrow concern that the Chairman has upon which he bases his point of order, but, on the other hand, there are implications in the language of the bill that I think this additional language in this paragraph addresses, and that is the potential to go beyond those narrow constraints that I think the gentleman, the Chairman, would presume exist within this legislation.

I am less sure and less confident that those restraints are there. I would argue that the specificity of the first part of this sentence that "No officer, employee, or agent of the Federal Government or of an organization conducting medical reviews for purposes of carrying out the study provided for in" that subsection indicated is language narrow enough to be germane to the intent of the bill.

THE CHAIRMAN: Are there further Members who wish to be heard on the point of order? If not, the Chair is prepared to rule.

The Chair, in listening to and weighing the arguments, finds that the point of order is well taken. The argument seems to establish that the amendment offered by the gentleman from Illinois (Mr. Philip M. Crane) could go to confidentiality of other medical records that would not otherwise be covered by the pending legislation and as such represents, then, too broad an amendment. The records could deal with additional information that would usually be under the confidentiality of physician-and-patient relationship, that would be outside the services rendered through this program if the conduct of Federal officers is not to be confined to the carrying out of the study in section 14. Therefore, the Chair states that the point of order is well taken.

MR. PHILIP M. CRANE: Mr. Chairman, may I direct a question to the chairman of the committee?

THE CHAIRMAN: The point of order is sustained. The amendment is ruled out of order.

Burden of Proof, Point of Order Against Content of Bill

§ 8.4 The burden falls on the proponents of a provision in a general appropriation bill to show that it does not constitute legislation, and the Chair will sustain the point of order if the committee or other Members do not fulfill this responsibility.

During debate under the five-minute rule during consideration of the Labor and Health, Education, and Welfare appropriation bill for fiscal 1978, a provision in the bill was read by the Clerk, and a point of order was then raised against the proviso carried in the paragraph. The point of order was raised by a member of the Committee on Ways and Means, Mr. James C. Corman, of California, who argued that the proviso created new and additional duties for officials administering the welfare programs

funded in the paragraph. The rather elaborate arguments for and against the point of order illustrate the complexities which sometimes confront the Chair in determining the effect of a so-called "limitation" in a general appropriation bill. The proceedings of June 16, 1977,[14] were as follows:

The Clerk read as follows:

GRANTS TO STATES FOR UNEMPLOYMENT INSURANCE AND EMPLOYMENT SERVICES

For grants for activities authorized by the Act of June 6, 1933, as amended (29 U.S.C. 49–49n; 39 U.S.C. 3202(a)(1)(E); Veterans' Employment and Readjustment Act of 1972, as amended (38 U.S.C. 2001–2013); title III of the Social Security Act, as amended (42 U.S.C. 501–503); sections 312 (e) and (g) of the Comprehensive Employment and Training Act of 1973, as amended; and necessary administrative expenses for carrying out 5 U.S.C. 8501–8523, 19 U.S.C. 1941–1944, 1952, and chapter 2, title II, of the Trade Act of 1974, including, upon the request of any State, the payment of rental for space made available to such State in lieu of grants for such purpose, $53,600,000, together with not to exceed $1,529,000,000, which may be expended from the Employment Security Administration account in the Unemployment Trust Fund, and of which $174,400,000 shall be available only to the extent necessary to meet increased costs of administration resulting from changes in a State law or increased salary costs resulting from changes in insurance claims filed and claims paid or increased salary costs resulting from changes in State salary compensation plans embracing employees of the State generally over those upon which the State's basic grant was based, which cannot be provided for by normal budgetary adjustments: *Provided* That any portion of the funds granted to a State in the current fiscal year and not obligated by the State in that year shall be returned to the Treasury and credited to the account from which derived: *Provided further,* That none of the funds appropriated or otherwise made available in this paragraph shall be obligated or expended to pay Federally funded unemployment compensation to an individual who refuses employment which pays at least the prevailing wage and which meets the labor standards specified in section 3304(a)(5) of the Internal Revenue Code of 1954, as amended, after having received unemployment compensation for 26 or more consecutive weeks, unless such individual is enrolled in a training program under the Comprehensive Employment and Training Act of 1973, as amended.

MR. CORMAN: Mr. Chairman, I have a point of order.

THE CHAIRMAN:[15] The gentleman will state his point of order.

MR. CORMAN: Mr. Chairman, I make a point of order with respect to the proviso on page 5, beginning with the words "Provided further" on line 6 and continuing through line 16. This proviso is in violation of clause 2 of rule XXI, of the Rules of the House.

Clause 2 of rule XXI provides that no provision in an appropriation bill that changes existing law will be in order.

14. 123 CONG. REC. 19362–64, 95th Cong. 1st Sess.

15. Richard Bolling (Mo.).

The proviso on page 5 would prohibit the use of these appropriated funds for any administrative costs associated with the payment of federally funded unemployment compensation benefits to an individual who had refused a job paying the prevailing wage, after that individual had collected 26 or more weeks of unemployment compensation.

In order to be in compliance with this proviso, unemployment compensation agencies will have to either deny benefits to such individuals, or pay for the administrative costs associated with the payment of benefits to such individuals out of State or other Federal funds. Either alternative will impose new duties and require additional determinations, not required under present Federal law, on the part of the administrators of the unemployment compensation program.

Specifically, both of these alternatives would require the administering agency, with regard to every claimant who had collected 26 or more weeks of unemployment compensation, to determine whether or not the individual had refused a job paying prevailing wages. This determination would have to be made either for the purpose of denying benefits to such individuals or to identify that portion of a State's administrative costs that could not be paid out of Federal funds provided in this appropriation bill.

Such a determination is not required under present Federal law. This proviso changes present law in that it requires this new and costly determination on the part of UC administrators. Furthermore, there are no funds provided to cover the costs associated with this additional determination and responsibility.

It has been argued that this proviso requires no new duties or determinations beyond those required under section 3304(a)(5) of the Internal Revenue Code. This argument is incorrect.

Section 3304(A)(5) prohibits a State from denying benefits to an individual who has refused a job that pays less than prevailing wages. This section of present law, in other words, prohibits a State from taking certain actions. It does not require a State to do anything, unless a claimant appeals a prior State action. In fact, a State can comply with this section of present law by never denying UC benefits to anyone on grounds of a refusal to accept work.

The proviso on page 5 of the appropriation bill before us is just the reverse. It requires unemployment compensation administrators to make certain determinations and take certain actions based on those determinations. Specifically, for every claimant who has collected 26 or more weeks of UC benefits, the administrator must determine whether or not he has refused any job that paid prevailing wages, and, if so, the administrator must either deny him any additional benefits or recover costs associated with the processing and payments of additional benefits from a new source of funds.

Furthermore, the proviso is in conflict with the work requirement provisions of the Emergency Unemployment Compensation Act of 1977, Public Law 95–19, as it applies to individuals who apply for or are collecting Federal supplemental benefits. This law, enacted in April of this year, prohibits the payment of Federal supplemental benefits to an individual who refuses a job, if the job:

Is within his capabilities;

Pays the minimum wage and gross wages equal to the individual's unemployment benefits, including any supplemental unemployment benefits for which the individual is entitled because of agreements with previous employers;

Is offered in writing or listed with the employment service;

Meets other requirements of Federal and State law pertaining to suitable or disqualifying work that are not inconsistent with the three conditions just stated.

The effect of the proviso would be that, in the 20 States where Federal supplemental benefits are presently being paid, there will be two different and inconsistent Federal work requirements for claimants of Federal supplemental benefits who have collected 26 or more weeks of benefits.

Present Federal law pertaining to the Federal supplemental benefits program denies supplemental benefits to an individual who refuses a job paying the minimum wage, and provides a number of carefully worked out conditions, protections, and procedures necessary for the proper and effective administration of this kind of a Federal standard. Whereas, the proviso on page 5 of the bill before us refers to "prevailing" rather than "minimum" wages, which can be substantially different. Also the proviso would appear to negate all the other conditions, procedures, and protections contained in present law and carefully developed by the Committee on Ways and Means. This clearly constitutes a change in present Federal law pertaining to the Federal supplemental benefits program.

As I have explained, the proviso on page 5 imposes a new responsibility on the part of the agencies that administer the unemployment compensation program. It requires a costly determination not required under present law and provides no funds to cover the costs of this additional determination.

With respect to the Federal supplemental benefits program, it changes, or is in conflict with, a provision that, over a period of many weeks, was very carefully formulated and specified.

Consequently, this provision is in violation of clause 2 of rule XXI of the Rules of the House.

THE CHAIRMAN: Does the gentleman from Pennsylvania (Mr. Flood) desire to be heard on the point of order?

MR. [DANIEL J.] FLOOD [of Pennsylvania]: I do, Mr. Chairman.

We believe that this language is simply a limitation on the use of the appropriated funds in the bill. It gives no affirmative direction to the executive branch, in our judgment. It imposes no new or additional duties and requires no determination that would not normally be made.

Therefore, Mr. Chairman, we ask the Chair to overrule the point of order.

THE CHAIRMAN: Does the gentleman from Illinois (Mr. Michel) desire to be heard on the point of order?

MR. [ROBERT H.] MICHEL [of Illinois]: Yes, Mr. Chairman, I would like to be heard on the point of order.

> Nor shall any provision in any such bill or amendment thereto changing existing law be in order, . . .

This appears to be the real question involved in the point of order raised by the gentleman from California (Mr.

Corman). But I would like to ask the present occupant of the chair, who is so well skilled in the rules and parliamentary procedures and the precedents of the House, to examine the rest of that clause.

Historically this provision has been amended many times. At one time the Committee on Rules could not agree as to the proper position after questions arose of increased power which some said would come to the Committee on Appropriations.

I mention this for a special reason. Our appropriations process has now been modified by enactment of the Budget Act and is constantly challenged, as we will no doubt find during consideration of the present bill. The challenge to the appropriation process is currently in the form of limitation amendments such as the one on this subject, and upon which the Chair is constantly being called upon for a ruling as to whether it is a proper limitation under this rule and the existing precedents and statutes.

Having said that, the question again is whether the language does in effect change the existing law. I contend it does not change existing law and does not place an additional duty upon the executive officer as a result of this position. I do not believe that the gentleman from California (Mr. Corman) has adequately demonstrated that the language does change existing law.

The rationale behind the precedent on the rule for limitations in appropriation bills, is that this body has the right to decline to appropriate for any purpose which they deem improper, although that purpose may be authorized by law. Based on this premise, there are many rulings that if the House has the right not to appropriate funds for a specific purpose authorized by law, then it has the right to appropriate for only a part of that purpose and prohibit the use of money for the rest of the purpose authorized by law.

This language, I contend, is not a change of law but rather a restriction on the use of funds to pay federally funded unemployment compensation to those who do not meet certain qualifications.

If the Chair will indulge us a few further moments, specifically, as the chairman of the subcommittee, the gentleman from Pennsylvania (Mr. Flood) has said, the language is simply a limitation. It was written as such. It is limited to the funds appropriated in this bill. It does not change existing law. It is very similar in nature to the Findley OSHA limitation 3 years ago and to the OSHA and busing limitations we considered in connection with the Labor-HEW bill last year, all of which were subject to points of order and overruled then by the Chair.

This limitation, like the others, is simply a negative restriction on the moneys contained in this bill.

As to those supposedly additional duties imposed upon the executive branch that my friend the gentleman from California (Mr. Corman) alludes to, let me say:

Prevailing wages are already determined by the Labor Department. They are determined under Davis-Bacon for construction jobs, under the Service Contracts Act for jobs involved in such contracts, as part of the certification process for the employment of aliens, and for in-season agricultural jobs. In

addition, and most importantly, when an employer lists a job with the Employment Service, the Employment Service must determine whether or not the wages paid are "substandard." The Employment Service considers standard wages as prevailing wages and substandard wages are thus those wages falling below prevailing wages. If substandard wages are paid, the job listing is so designated, and the Employment Service does not refer applicants to such jobs.

We can refer further for authority to the employment security manual on that item. Furthermore, under the requirements of the Federal Unemployment Tax Act, an individual cannot be recruited for employment, and unemployment benefits cannot be denied to an individual who refuses to accept work, "if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality."

On that we have authority again from the head, Mr. Weatherford, of the Unemployment Compensation Office in the Department of Labor. Both of these last two standards, in other words, require the Employment Service to determine the prevailing wage in order to carry out the standards, and this is being done. Under regulations prescribed by the Secretary of Labor, individuals receiving unemployment benefits are required to register with the Employment Service. The limitations in the bill thus apply to individuals registered with the Employment Service and jobs listed with the Employment Service. Since a determination of the prevailing wage is made for the jobs listed and to which individuals are referred, there will be no extra effort required on the part of the Department then to carry out the limitation language.

Let me address myself now to the 26 weeks the gentleman referred to. The limitation does not apply to any benefits until after an individual has received benefits for 26 weeks. The Unemployment Insurance Office keeps track of how long each individual has received benefits. In addition, when a recipient of unemployment benefits registers with the Employment Service, the Unemployment Insurance Office tells the Employment Service the date when the individual started receiving benefits. So the information as to the length of time benefits have been received and, thus, the point when 26 weeks have passed is readily available and will not require any extra effort.

As to when the Federal benefits begin, after the State has concluded its obligation or there is a shared benefit, the Unemployment Insurance Office retains separate accounts for benefits paid by different sources of funds, so that when there is a change in the source of funding for an individual's benefits such as after 26 weeks when the Federal Government in most cases pays half, a new bookkeeping transaction takes place. It is a simple matter for the unemployment insurance arm to notify the Employment Service arm of this without any increased effort, since both are part of the same State employment security agency and most of the time are located in the same suite or facility around the country.

I think there are some other specific points to which we might make ref-

erence, but I think that pretty well ought to give the Chair good grounds upon which he could overrule the point of order raised by the gentleman from California.

THE CHAIRMAN: Does the gentleman from California (Mr. Corman) desire to be heard further?

MR. CORMAN: I would like to be heard for just a moment. There seems to be some confusion in some minds about how unemployment compensation works. The first 26 weeks is not necessarily the State program. The first half of one's entitlement is that. We have just spelled out in substantial detail the work requirements under FSB. About 25 percent of those who draw FSB draw it within the first 26 weeks in which they work. After that period of time we would have legislated to separate inconsistent work requirements, and that is clearly legislation on an appropriation bill. It would be next to impossible for an administrator to administer because the job requirements would be inconsistent.

THE CHAIRMAN: The gentleman from California has made a very scholarly and thorough point of order, and he has received a very scholarly and thorough reply. This is a very complicated matter and a difficult one for the Chair to rule on.

The Chair feels that the crux of the matter lies in whether or not the Federal officials who now process unemployment compensation claims are presently required to make a judgment with regard to the refusal of work paying the prevailing wage.

The Chair does not believe that the arguments on either side have done anything to demonstrate that this would not be an additional duty for those particular officials. Therefore the Chair feels that on this ground and some that he would like to read the point of order is valid and the Chair will sustain the point of order at the conclusion of his statement.

The gentleman from California makes a point of order against the proviso in the bill on the grounds that it constitutes legislation on an appropriation bill.

The proviso prohibits the use of funds in the bill for processing of unemployment compensation benefits after 26 weeks to individuals refusing work which pays the prevailing wage. As indicated by the argument of the gentleman from California, the executive officials administering the program are not under a responsibility as they process claims pursuant to existing Federal law, to make case-by-case determinations as to the prevailing wage for positions of employment. The proviso in the bill would place affirmative duties on persons whose salaries are paid by funds in this bill to make such determinations.

Despite the excellence of the argument of the gentleman from Illinois, the Chair still feels that the weight of the argument lies on the side of the gentleman from California, and therefore the Chair, for those reasons and the reasons that he has suggested, sustains the point of order and the proviso is stricken.

Burden of Proof That Appropriation Authorized

§ 8.5 The burden of proving that an item carried in a gen-

eral appropriation bill is in fact authorized by law falls to the Committee on Appropriations, which must cite specific authority for the appropriation.

On Aug. 3, 1978,[16] during consideration of the Foreign Aid Appropriation bill for fiscal 1979, an item was read allowing certain funds in the bill to be used for entertaining expenses. When an amendment was raised against the paragraph as legislation, the manager of the bill responded in an imprecise manner. The proceedings were as follows:

The Clerk read as follows:

> SEC. 111. Of the funds appropriated or made available pursuant to this Act, not to exceed $73,900 shall be for entertainment expenses relating to the Military Assistance Program, International Military Education and Training, and Foreign Military Credit Sales during fiscal year 1979: *Provided*, That appropriate steps shall be taken to assure that, to the maximum extent possible, United States-owned foreign currencies are utilized in lieu of dollars.

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Chairman, a point of order.

THE CHAIRMAN:[17] The gentleman will state it.

MR. BAUMAN: Mr. Chairman, I make a point of order against the total section 111 on the grounds it is not authorized in law and lines 17 through 19 constitute legislation on an appropriation bill.

THE CHAIRMAN: Does the gentleman from Maryland (Mr. Long) desire to speak to the point of order?

MR. [CLARENCE D.] LONG of Maryland: Mr. Chairman, I oppose the point of order being made by the gentleman.

The language the gentleman refers to is not legislation in that it does not direct nor does it require a U.S. Government official to use U.S.-owned foreign currencies. It merely states that steps should be taken, where possible, to utilize U.S.-owned foreign currencies in lieu of dollars.

In addition, in section 612(b) of the Foreign Assistance Act of 1961, as amended, which is the paragraph that authorizes the use of foreign currencies, the following language appears:

> The President shall take all appropriate steps to assure that, to the maximum extent possible, United States-owned foreign currencies are utilized in lieu of dollars.

Therefore, the language the gentleman is raising a point of order against is merely a restatement of the language contained in the authorizing legislation and does not constitute legislation in an appropriation bill. I ask for a ruling by the Chair.

THE CHAIRMAN: Does the gentleman from Maryland (Mr. Bauman) desire to be heard further on the point of order?

MR. BAUMAN: Mr. Chairman, the language of section 111 goes well beyond assigning duties by the President and assumes by its proviso that the duties are assigned to anyone that

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16. 124 CONG. REC. 24252, 95th Cong. 2d Sess.

17. Abraham Kazan, Jr. (Tex.).

might have the appropriate authority and that certainly goes beyond the scope which the gentleman has cited as legislative authority for that amount of money, which is entertainment expenses.

THE CHAIRMAN: The Chair feels that the question of authorization may be a valid point of order. The Chair will call on the chairman of the committee to show that this sum is authorized. Can the gentleman from Maryland (Mr. Long) make such a showing?

MR. LONG of Maryland: Mr. Chairman, we have no specific authorization, merely citations.

THE CHAIRMAN: The Chair then will sustain the point of order and the entire section is stricken.

§ 8.6 A Member wishing to make a point of order against a pending paragraph of a bill being read for amendment must specify the precise text to which he objects, and a generalized point of order against "anything in the paragraph which is not authorized" will not be entertained by the Chair.

On June 7, 1991,[18] during the consideration in Committee of the Whole of the Defense appropriation bill for fiscal 1992, the bill manager, Mr. John P. Murtha, of Pennsylvania, asked that the title of "Operation and Maintenance" be considered read and open for amendment. Following agreement to this request, the Chairman invited points of order. Mr. James A. Traficant, Jr., of Ohio, then raised a generalized inquiry as follows:

The Clerk read as follows:

TITLE II—OPERATION AND MAINTENANCE

OPERATION AND MAINTENANCE, ARMY

(INCLUDING TRANSFER OF FUNDS)

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Army, as authorized by law; and not to exceed $14,437,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Army, and payments may be made on his certificate of necessity for confidential military purposes; $18,362,945,000: . . .

OPERATION AND MAINTENANCE, NAVY

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Navy and the Marine Corps, as authorized by law; . . .

OPERATION AND MAINTENANCE, MARINE CORPS

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Marine Corps, as authorized by law; $2,082,500,000; . . .

OPERATION AND MAINTENANCE, AIR FORCE

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Air Force, as authorized by law; . . .

18. 137 CONG. REC. 13973-76, 102d Cong. 1st Sess.

MR. MURTHA (during the reading): Mr. Chairman, I ask unanimous consent that title II be considered as read, printed in the Record, and open to amendment at any point.

THE CHAIRMAN:[19] Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

PARLIAMENTARY INQUIRIES

MR. TRAFICANT: Mr. Chairman, I have a parliamentary inquiry. I would like to inquire of the Chairman if it is in order to ask if there is any legislating on this section of the bill that has not been, in fact, waived from such legislating or allowed to legislate by the Rules Committee. I would then be forced to object to any legislating language that is appropriating in title II of the bill.

MR. MURTHA: Mr. Chairman, if the gentleman will yield, the only thing that it protected in the language is the normal appropriation paragraph protection that we afford to the bill or to parts of the bill when there is no final authorization. . . .

MR. TRAFICANT: Further reserving my right to object, I am not so sure I have an answer. I want to know if there is any legislation in title II that has not been specifically protected from objection on the floor.

MR. MURTHA: Sure.

MR. TRAFICANT: If there are some that have not been protected by the Rules Committee, then I will object to any section of title II that is not officially protected by the Rules Committee as in fact legislating on an appropriation bill.

THE CHAIRMAN: The Chair would advise the gentleman from Ohio that the gentleman must be specific as to the provisions against which he makes points of order.

MR. TRAFICANT: Is the Chair instructing the Member that a Member cannot request a blanket prohibition of legislation on an appropriation bill in title II of the defense bill?

THE CHAIRMAN: The gentleman is correct. The Chair is advising the gentleman that a point of order may be made but it must specify the provision of the bill against which it is made.

MR. TRAFICANT: The specificity is, in fact, that any part of the legislation that has not been in fact protected from objection and to be stricken by the Rules Committee.

THE CHAIRMAN: The Chair would restate for the gentleman from Ohio that he must specify the provisions in the bill to which he objects and on which he wishes to make a point of order.

MR. TRAFICANT: So the Chair then has ruled that a Member must be specific in stating what legislative language there is?

THE CHAIRMAN: Those are the rules of the House. The gentleman may not enter a general objection to "such legislation as may be unprotected by waiver." His point of order must identify text and articulate grounds.

MR. TRAFICANT: That he cannot ask for a specific blanket objection for all legislative language on an appropriation bill that has not been protected under the rule? Is that what the Chair's ruling is?

THE CHAIRMAN: The Chair will elaborate further for the gentleman.

The Chair cannot accept the gentleman's assumption that language may

19. James L. Oberstar (Minn.).

be objectionable merely because there is not a waiver provided for it. That is why the practice and precedents of the House require that such points of order be specific.

MR. TRAFICANT: Would it be in order then, Mr. Chairman, for the gentleman to read each section of title II and object to them officially and to, in fact, reserve the right to object on each specific section for, in fact, legislating on an appropriation bill?

THE CHAIRMAN: If the gentleman objects to opening this title, then the Clerk will read by paragraph. . . .

MR. MURTHA: This is the operation and maintenance title for the entire armed services. This title provides the training money for the services that you are deleting. This is training money and operation and maintenance money for the services.

MR. TRAFICANT: Mr. Chairman, I certainly would like to have a Buy American in that section. . . .

THE CHAIRMAN: Is there objection to opening up title II of the bill?

There was no objection.

THE CHAIRMAN: Are there any points of order against title II?

POINTS OF ORDER

MR. TRAFICANT: Mr. Chairman, I bring a point of order against title II of the bill on page 9, line 10, Operation and Maintenance of the Navy, for language which is, in fact, specifically legislation on an appropriation bill.

THE CHAIRMAN: Will the gentleman restate his point of order? The gentleman makes a point of order against which line?

MR. TRAFICANT: Reserving my right to further object, on page 9, line 10, the section under title II, Operation and Maintenance, Navy, that, in fact, that section from page 9, line 10, through, in fact, page 10, line 17, constitutes legislating on an appropriation bill. I say it should be stricken unless specifically protected by the rule.

THE CHAIRMAN: The Chair will advise the gentleman that the text from page 9, line 10 through the first portion of page 9, line 23 is protected under the rule. The balance, beginning with "Provided further" on line 23 through line 17 on page 10 is not protected.

MR. TRAFICANT: The gentleman then officially objects to title II, starting on page 9, line 23, through and continuously through page 10, line 17, for, in fact, being legislating on an appropriation bill that has not passed through an authorizing committee, and it should be stricken.

THE CHAIRMAN: Does the gentleman from Pennsylvania [Mr. Murtha] wish to be heard on the point of order?

MR. MURTHA: We concede it is legislation. However, we want the gentleman to know that he is very seriously harming the defense of this country by making these deletions which he admits himself he is not aware of the impact that they are having on the bill. . . . But I have to concede the point of order. If you want to knock it out, it would be knocked out under the point of order. . . .

THE CHAIRMAN: The gentleman from Ohio will refrain from debating the merits of the bill on his point of order.

The Chair wishes to advise, again, that the point of order is made against the two provisos, one beginning on line 23, on page 9, and the other beginning on line 11 on page 10.

The gentleman from Pennsylvania has conceded the point of order. Accordingly, the two provisos are stricken. . . .

MR. TRAFICANT: The point of order is legislating on an appropriation bill, page 11, line 1, through line 11, of the section of Operation, Maintenance, Marine Corps, and I ask that it be stricken for legislating on an appropriation bill.

THE CHAIRMAN: The gentleman is advised that on page 11, only lines 1 through 8, after "September 1, 1992," are unprotected.

MR. TRAFICANT: Mr. Chairman, I move that language be stricken.

THE CHAIRMAN: Does the gentleman from Pennsylvania wish to be heard on the point of order?

MR. TRAFICANT: Mr. Chairman, I would like an answer on this.

THE CHAIRMAN: The gentleman has made his point of order. The Chair has inquired of the chairman of the committee whether he wishes to be heard on the point of order.

MR. MURTHA: Mr. Chairman, I concede the point of order. . . .

I agree with what the gentleman is trying to do, but what the gentleman is doing here is decimating things under the normal procedure that are important to the defense of this country.

MR. TRAFICANT: Continuing my point of order, Mr. Chairman, and to respond——

THE CHAIRMAN: The Chair will hear argument on the point of order, not on collateral issues.

MR. TRAFICANT: Continuing on my point of order, Mr. Chairman, this gentleman is not here on any ego trip. I think the procedures of the House have finally brought us to this.

THE CHAIRMAN: Does the gentleman insist on his point of order?

MR. TRAFICANT: I insist on my point of order, Mr. Chairman.

THE CHAIRMAN: The point of order has been conceded and is sustained, and accordingly, the language on line 1 of page 11 beginning with "Provided further," through line 8, concluding with "decision:" is stricken.

Are there other points of order against the provisions of title II?

Burden of Proof Where Point of Order Is Made Against "Legislation" in a General Appropriation Bill

§ 8.7 The proponent of an amendment to a general appropriation bill has the burden of refuting a point of order accompanied by argument that the amendment-although phrased as a limitation on funds-changes existing law, and the Chair will sustain the point of order where the proponent of the amendment does not cite law or precedent supporting her position.

On July 17, 1975,[20] during consideration of the Treasury, Postal Service and general government appropriations for fiscal 1976, an amendment was offered in the form of a limitation on funds in

20. 121 CONG. REC. 23239, 94th Cong. 1st Sess.

the bill. The chairman of the Subcommittee on Treasury, Post Office Appropriations, Mr. Tom Steed, of Oklahoma, who was managing the bill, raised a point of order that the limitation in fact interfered with the discretionary authority of the Postal Rate Commission. The proponent of the amendment declined to be heard on the point of order, and the Chair then ruled based on the argument presented by Mr. Steed.

MRS. [MILLICENT] FENWICK [of New Jersey]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mrs. Fenwick: Add a new section 613 on page 45, line 21: "None of the funds appropriated under this Act shall be available to permit Parcel Post to be handled at less than its attributable cost."

MR. STEED: Mr. Chairman, I reserve a point of order against the amendment.

THE CHAIRMAN:[1] The gentleman from Oklahoma reserves a point of order. . . .

THE CHAIRMAN: Does the gentleman from Oklahoma insist on his point of order?

MR. STEED: I insist on my point of order, Mr. Chairman. This amendment would have the effect of changing existing law. The Congress enacted the Postal Service Corporation bill and created the Rate Commission and delegated to the Rate Commission the sole and final authority on all postal rates. The impact of this amendment would be to limit and change that postal ratemaking power that is inherent in the law creating the Postal Corporation.

If the amendment here is permitted to prevail then all sorts of amendments affecting the operation of the Postal Service would be applicable and the whole purpose of the Postal Service Corporation law would be destroyed. So I think it is very imperative since this does change the law and the powers invested in the Rate Commission that we hold it is obviously legislation on an appropriation bill.

THE CHAIRMAN: Does the gentlewoman from New Jersey desire to be heard on the point of order?

MRS. FENWICK: No, Mr. Chairman.

THE CHAIRMAN: Permit the Chair to direct a question to the gentleman from Oklahoma.

Is the gentleman's position such that in his opinion this amounts to a change in law? Would the gentleman speak to that point?

MR. STEED: Yes. The sole authority to determine what will be charged for parcel post, whether it is more or less than cost, is vested in the Postal Rate Commission and to accept this amendment here would limit that authority which would change the law which vests that total power in that Commission. So it would require an action on the part not only of the ratemaking Commission but the Postmaster General in that he does not now have to abide by this sort of demand.

The whole purpose of the corporation was to take the power to do that sort of thing out of Congress and leave it in the Postal Corporation for the postal rate commitment.

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1. B. F. Sisk (Calif.).

THE CHAIRMAN: The Chair is prepared to rule. The gentleman from Oklahoma makes a point of order against the amendment offered by the gentlewoman from New Jersey dealing with the availability of funds in connection with the matter of parcel post where the Postal Service permits parcel post to be handled at less than attributable costs.

The Chair feels that the point of order made by the gentleman from Oklahoma to the effect that, in essence, this changes basic law, must be sustained in light of the fact that the Chair does not feel that the gentlewoman from New Jersey has made a sufficient case that it would be otherwise.

Therefore, the Chair is constrained to sustain the point of order.

Parliamentarian's Note: Subsequent analysis of the law surrounding the responsibilities of the Postal Rate Commission (39 USC 3622 (b)(3)) and precedents dealing with limitation language which may curtail discretion suggest that a well-documented argument against the point of order might have been successful.

Before the proceedings reported above there was a paucity of strong precedent on who has the burden of proof where an amendment is challenged as being legislative. But by analogy to the precedents under Rule XXI clause 2, requiring the committee or Member offering an amendment to show an authorization for a proposed appropriation, it seems that the proponent of an amendment should at least have the burden to come forward with some showing that the language offered is not legislative in effect.

Burden of Proof, Amendment to General Appropriation Bill

§ 8.8 The burden of proof is on the proponent of an amendment to a general appropriation bill to show that the amendment does not have the effect of changing existing law.

On June 16, 1977,[2] Chairman Bolling, presiding in Committee of the Whole during the consideration of the Labor and Health, Education, and Welfare appropriation bill for fiscal 1978, having ruled out a proviso in the bill as legislative in effect, was faced with an amendment which addressed the same issue but with a modified approach. Again, the burden of proof was on the advocates of the amendment and the Chair ruled that the burden was not met.

MR. [ROBERT H.] MICHEL [of Illinois]: Mr. Chairman, I offer an amendment.

THE CHAIRMAN:[3] The Chair feels that under the circumstances he must recognize the gentleman from Illinois.

2. 123 CONG. REC. 19364, 19365, 95th Cong. 1st Sess.

3. Richard Bolling (Mo.).

The Clerk will report the amendment.

The Clerk read as follows:

> Amendment offered by Mr. Michel: On page 5, line 6, after "derived", strike the period and insert in lieu thereof, ": *Provided further*, That none of the funds appropriated or otherwise made available in this paragraph shall be obligated or expended to pay federally funded unemployment compensation to an individual who refuses employment which pays the higher of the minimum wage or the average unemployment benefit in a state and which meets the labor standards specified in Section 3304(a)(5) of the Federal Unemployment Tax Act after having received unemployment compensation for 26 or more consecutive weeks, unless such individual is enrolled in a training program under the Comprehensive Employment and Training Act of 1973, as amended."

MR. [JAMES C.] CORMAN [of California]: Mr. Chairman, I reserve a point of order.

THE CHAIRMAN: The gentleman from California has reserved a point of order, and the gentleman from Illinois is recognized for 5 minutes.

MR. MICHEL: Mr. Chairman, in view of the ruling by the Chair, I am offering amended language which seeks to overcome the point of order problem. Instead of using the prevailing wage as the standard, I am using the minimum wage or the average State unemployment benefit payment level, whichever is higher.

This is the language which is already in the law for recipients of Federal supplemental benefits. That standard applies to recipients after 39 weeks of benefits, and I am simply proposing to extend it to all Federal benefits after 26 weeks of having received unemployment benefits. This standard is consistent with the authorizing legislation, and certainly does not result in any additional effort because it is already determined by the Department of Labor.

I offer this amendment because I believe it is particularly important that we zero in on the problem whereby many of the long-term unemployed seem to find it more comfortable to continue to receive unemployment benefits rather than take a job that may be a couple of cuts below what they may desire. . . .

THE CHAIRMAN: Does the gentleman from California make the point of order and insist on the point of order?

MR. CORMAN: Mr. Chairman, I insist on the point of order.

THE CHAIRMAN: The Chair will listen to the gentleman, of course, to make the point of order and the argument for it; but the Chair, while no expert on unemployment, is concerned about having the argument go to the question of when the Federal official, who must make a determination on the payment of unemployment compensation, has to make a determination with regard to a job that has been refused, that pays a certain level of wage. The Chair is interested in knowing the timing on that in the discussion that will come forth.

MR. CORMAN: Mr. Chairman, I thank the Chairman for that guidance.

There is considerable confusion as to what periods of time, which programs pay an unemployed worker. Those who are entitled to the maximum period of unemployment insurance have 26

weeks of regular insurance paid for out of State employer taxes, the administration for which is paid for out of Federal employer taxes.

At the end of that 26 weeks, if he has not been employed, he has an additional 13 weeks called extended unemployment benefits. That is paid, one-half out of State employer tax, one-half out of Federal employer tax, and the administration for which is paid out of Federal funds. During all of that period of time the suitability of work requirement is based on State law, with a Federal minimum below which suitability may not fall.

After that 39-week period there is a Federal supplemental benefit program which has been triggered in some 22 States. In those States where the unemployment rate is over 6 percent, one draws an additional 13 weeks financed totally out of the Federal Treasury. For that 13 weeks, there is a Federal suitability of work requirement which was adopted by this House this year. It is a reasonably good one; it is not the one read by the gentleman from Illinois; it is very different from that.

Now, the dilemma is that about a third of the employees who are drawing benefits do not draw the maximum benefit, and so in that first 26 weeks some would be totally under the State program; some for a portion of the time would be under State and State/Federal; and some would be under State, State/Federal and totally Federal. There is nothing that can disclose at what period of time one triggers in, because whatever his entitlement may be, it is one-half State, a quarter State/Federal, and a quarter Federal.

The greatest problem of all for the administrator would be attempting to apply suitability of work requirement, which is totally inconsistent, but was the direction of the Congress for those people drawing FSB within the first 23 weeks. There is no question but that there would be an additional requirement on administrators to ascertain the suitability of work inconsistent with and different from their own State requirements and the recently-passed Federal requirement. That is my point of order.

THE CHAIRMAN: Does the gentleman from Illinois desire to be heard?

MR. MICHEL: Only to say, Mr. Chairman, that what the gentleman is saying about what conditions do prevail, other than the wage, after 39 weeks, we are simply seeking to impose at the expiration of the 26 weeks. All that information is at hand, and there are absolutely no additional duties required. We are simply tightening up 13 weeks on what the gentleman's position is with respect to what flows after 39 weeks.

It is perfectly in order that what we are doing here again, I say, is a limitation. Under chapter 25, section 10, Deschler's Procedure, it is not in order in an appropriation bill to insert by way of amendment a proposition which places additional duties on the executive officer, but the mere requirement that the executive officer be the recipient of information is not considered as imposing upon him any additional burdens, and is in order. There are, of course, ample precedents for that. I rest my case.

MR. CORMAN: I may just respond to the one point, Mr. Chairman, by saying that the amendment proposed is not consistent with the Federal supple-

mental benefit requirements. Even if it were, I believe a point of order would lie, but it is not consistent.

THE CHAIRMAN: The Chair will state again that this is a very difficult and complicated problem. The Chair feels that, although the gentleman from Illinois has made a strong argument, that the Chair is required by the precedents to construe limitations strictly. The weight of the argument, in the Chair's opinion, falls on the side of the gentleman from California, and the Chair, for the reasons stated in his prior ruling[4] and after hearing the additional argument made by the gentleman from California, sustains the point of order against the amendment.

Construing the Rule Against Legislating in Appropriation Bill

§ 8.9 Where an amendment to a general appropriation bill is subject to two interpretations, one of which would render the amendment subject to a point of order, the Chair strictly construed the rule against legislating in an appropriation bill and sustained a point of order against the amendment.

Where an amendment was offered to a general appropriation bill, similar to one held in order in a previous Congress as a proper limitation, the Chair was convinced by the argument on the point of order that the language was intended to impose new duties and sustained a point of order that the amendment violated Rule XXI clause 2. The proceedings of June 14, 1978,[5] relevant to the amendment and the Chair's ruling are carried below.

MR. [R. LAWRENCE] COUGHLIN [of Pennsylvania]: Mr. Chairman, I offer an amendment, my amendment No. 2.

The Clerk read as follows:

Amendment offered by Mr. Coughlin: On page 6, after line 23, insert the following new section:

SEC. 102. (a) None of the funds appropriated by any provision described in subsection (b) shall be expended or obligated for any purpose specified in such provision unless such funds so expended or obligated are subject to audit by the Comptroller General of the United States.

(b) For purposes of subsection (a), any provision in Title I of this Act following the provision relating to "COMPENSATION OF MEMBERS" and preceding the heading "JOINT ITEMS" is a provision described in this subsection. . . .

(Mr. Coughlin asked and was given permission to revise and extend his remarks.)

MR. [GEORGE E.] SHIPLEY [of Illinois]: Mr. Chairman, may I make an inquiry? I was unable to determine which amendment this is.

MR. COUGHLIN: The amendment No. 2, which I believe the gentleman has.

MR. SHIPLEY: I might want to reserve a point of order, but I am not sure which amendment the gentleman is offering.

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4. See § 8.4, supra.

5. 124 CONG. REC. 17650, 17651, 17667, 95th Cong. 2d Sess.

THE CHAIRMAN PRO TEMPORE:[6] The Clerk will again report the amendment.

The Clerk rereported the amendment.

MR. COUGHLIN: I raise a point of order, Mr. Chairman. I thought that we were on my 5 minutes.

THE CHAIRMAN PRO TEMPORE: The gentleman from Pennsylvania had not proceeded to his debate.

MR. SHIPLEY: Mr. Chairman, I reserve a point of order on the amendment.

MR. COUGHLIN: Mr. Chairman, this is identical to an amendment offered last year by the gentlewoman from Massachusetts (Mrs. Heckler) and the gentlewoman from New York (Mrs. Chisholm) to provide for a GAO audit of Members and committee accounts. It is the identical amendment that was raised at that time. It was not objected to on a point of order. . . .

MR. SHIPLEY: Mr. Chairman, I would like to ask exactly what would take place in this type of audit.

MR. COUGHLIN: Mr. Chairman, I yield to the gentlewoman from Massachusetts (Mrs. Heckler).

MRS. [MARGARET M.] HECKLER [of Massachusetts]: Mr. Chairman, the operations of the Comptroller General under this amendment would continue as under existing circumstances in that site at the Capitol where the office is presently located. The authority would provide an audit of Members' accounts and committee accounts. It would provide that authority to be utilized by the GAO.

MR. SHIPLEY: Mr. Chairman, if the gentleman will yield further, does it extend in any way the present audit system that we have now in the House?

MR. COUGHLIN: Mr. Chairman, I yield to the gentlewoman from Massachusetts.

MRS. HECKLER: Mr. Chairman, it extends the authority that now exists in law but is not necessarily a change in existing law. It affirms the authority of the GAO which presently exists in the House; however, I do not believe that the GAO is able to examine Members' accounts and this amendment clarifies that authority. However, it does not mandate audits across the board of every Member at any particular time.

MR. SHIPLEY: Mr. Chairman, would the gentlewoman answer another question for me again. I am not quite clear in my own mind what exactly would this amendment require the Comptroller General to do specifically?

MRS. HECKLER: I believe that this amendment would provide an expansion of the number of accounts which the GAO is presently auditing including the tax-funded accounts of Members of Congress and our legislative committees, as covered by the general legislative appropriation bill. We are in this bill dealing with an appropriation of $992 million. I believe that these public funds should be subject to audit. This amendment merely affirms the legal authority to the GAO to conduct such audits.

MR. SHIPLEY: Mr. Chairman, I still reserve my point of order. . . .

Mr. Chairman, I would like to be heard on the point of order.

Mr. Chairman, I insist on my point of order.

Mr. Chairman, I object to the amendment and make a point of order

6. Dan Rostenkowski (Ill.).

against it on the grounds that it imposes additional duties on the Comptroller General and, as such, is in violation of clause 2, rule XXI of the House. The additional duties implied by the amendment might involve the Comptroller General insisting that time and attendance reporting systems be set up in Members and committee offices and may require setting up annual and sick leave systems and involve examination of Members' personal diaries, perhaps even their personal financial records. These are duties and procedures clearly beyond the offices of the Comptroller General's present audit authority. Under paragraph 842 of clause 2, rule XXI:

> An amendment may not impose additional duties, not required by law, or make the appropriation contingent upon the performance of such duties . . . then it assumes the character of legislation and is subject to a point of order.

MR. COUGHLIN: Mr. Chairman, may I be heard further on the point of order?

THE CHAIRMAN PRO TEMPORE: The gentleman from Pennsylvania (Mr. Coughlin) is recognized.

MR. COUGHLIN: Mr. Chairman, let me say that the amendment imposes no additional duties on the General Accounting Office. It proposes that these accounts be subject to audit by the GAO.

Title 31, section 67, of the United States Code annotated says as follows:

> . . . the financial transactions of each executive, legislative, and judicial agency, including but not limited to the accounts of accountable officers, shall be audited by the General Accounting Office in accordance with such principles and procedures and under such rules and regulations as may be prescribed by the Comptroller General of the United States.

In a memorandum to the Comptroller General from the general counsel of the General Accounting Office, the following language appeared:

> Our authority under the Budget and Accounting Act, 1921, to investigate all matters relating to the receipt, disbursement, and application of public funds also extends to the Congress.

I continue to quote from the memorandum, as follows:

> Similarly, our authority in the Accounting and Auditing Act of 1950 to audit all financial transactions, not limited to accountable officer transactions, extends to legislative agencies . . .

Mr. Chairman, it is very clear that the General Accounting Office already has the authority and the duty to audit the accounts of the legislative branch, and this amendment in no way expands or extends that authority. The General Accounting Office has taken a position that it is interested in having an expression of the will of the legislative branch as to whether it wishes the General Accounting Office to carry out that function. This amendment would be an expression of that will.

Mr. Chairman, the amendment would in no way expand the authority of the General Accounting Office or impose additional duties on the General Accounting Office; it would only make these accounts subject to audit.

MR. SHIPLEY: Mr. Chairman, may I be heard further on my point of order?

THE CHAIRMAN PRO TEMPORE: The Chair will hear the gentleman.

MR. SHIPLEY: Mr. Chairman, in the colloquy with the gentlewoman from Massachusetts (Mrs. Heckler), she stated that the amendment would extend the present authority of the GAO.

Again, Mr. Chairman, I press my point of order.

MR. COUGHLIN: Mr. Chairman, if I may be heard further on the point of order, I will say in answer to the gentleman from Illinois (Mr. Shipley) that I do not think the amendment would extend the present authority of the GAO.

THE CHAIRMAN PRO TEMPORE: The Chair is ready to rule.

The Chair certainly agrees that the language in the amendment is ambiguous. The Chair takes into account, however, the debate, and the debate as observed by the Chair indicates the amendment certainly does extend the authority of the Comptroller General and is subject to a point of order.

The Chair does recognize that there are conflicting interpretations of the amendment under discussion. However, the Chair has a duty under the precedents to construe the rule against legislation strictly where there is an ambiguity. The Chair feels he must sustain the point of order based on the interpretations given the amendment during the debate.

MR. COUGHLIN: Mr. Chairman, may I inquire, is the debate subject to a point of order?

THE CHAIRMAN PRO TEMPORE: The Chair will state that it has to make a determination based on the debate, and the Chair sustains the point of order.

MRS. HECKLER: Mr. Chairman, may I be heard?

THE CHAIRMAN PRO TEMPORE: The Chair sustains the point of order. . . .

MR. COUGHLIN: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Coughlin: On page 6, after line 23, insert the following new section:
>
> SEC. 102. None of the funds appropriated on pages 2 through 6 of this Act shall be made available for obligation unless such funds are subject to audit by the Comptroller General of the United States in accordance with the provisions of title 31, section 67 of the U.S.C.A.

Burden of Proof Where Language Is Susceptible to More Than One Interpretation

§ 8.10 The proponent of an amendment to a general appropriation bill has the burden of proving that the amendment does not change existing law and, if in the form of a "limitation" falls within the categories of permissible limitations delineated in the precedents arising under Rule XXI clause 2; and if the amendment is susceptible to more than one interpretation, it is incumbent on the proponent to show that it is not in violation of the rule.

On July 28, 1980,[7] the Committee of the Whole had under

7. 126 CONG. REC. 19924, 19925, 96th Cong. 2d Sess.

consideration the Housing and Urban Development-independent agencies appropriation bill, fiscal 1981. An amendment offered by Mr. Herbert E. Harris, II, of Virginia, to the bill was a restriction, not on the amount of funds in the bill, but on the timing of their obligation.

MR. HARRIS: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Harris: Page 45, after line 23, insert the following:

SEC. 413. No more than an amount equal to 20 percent of the total funds appropriated under this Act for any agency for any fiscal year and apportioned to such agency pursuant to section 3679 of the Revised Statutes of the United States (31 U.S.C. 665) may be obligated during the last two months of such fiscal year.

The point of order raised against the amendment by Mr. John T. Myers, of Indiana, the ranking member of the subcommittee bringing the bill to the floor, and the response to the point of order by the proponent of the amendment, as well as the Chair's ruling are carried below.

THE CHAIRMAN:[8] Does the gentleman from Indiana (Mr. Myers) insist on his point of order?

MR. MYERS of Indiana: I do, Mr. Chairman.

Mr. Chairman, the gentleman has offered an amendment to limit the appropriations to a specific time; but I respectfully suggest that the fact the gentleman has added the words, "No more than" is still not, in fact, a limitation.

The House has long established and the Committee has long established that Congress does have the right to limit how money shall be spent for a specific purpose. I quote:

> The House's practice has established the principle that certain "limitations" may be admitted. It being established that the House under its rules may decline to appropriate for a purpose authorized by law, so it may by limitation prohibit the use of money for part of the purpose, while appropriating for the remainder of it.

The first precedent that I want to cite is Hinds' Precedents, volume IV, section 3936, where on January 17, 1896, the Chairman of the Committee of the Whole, Nelson Dingley, ruled:

> The House in Committee of the Whole has the right to refuse to appropriate for any object which it may deem improper, although that object may be authorized by law; and it has been contended, and on various occasions sustained by the Committee of the Whole, that if the Committee has the right to refuse to appropriate anything for a particular purpose authorized by law, it can appropriate for only a part of that purpose and prohibit the use of the money for the rest of the purpose authorized by law.

Mr. Chairman, it has been firmly established a number of times, I could go on and quote, on January 31, 1925, the Chairman of the Committee of the Whole, John Tilson of Connecticut, ruled:

> Congress may appropriate for one subject authorized by law and refuse

8. Elliott H. Levitas (Ga.).

to appropriate for another object authorized by law.

This firmly establishes the principle that a limitation must apply to a specific purpose or an object.

Mr. Chairman, this does not do that.

I further cite that on June 25, Chairman Sharp of Indiana sustained a point of order that was asked by this gentleman on an appropriation bill, that he limits the discretionary power of the executive.

Now, this particular amendment has been remedied somewhat, or there has been an attempt to remedy, in citing section 3679 of the revised statutes of United States Code 31 U.S. 665.

Now, Mr. Chairman, the rules of the House of Representatives, rule XXI, section 843, says this:

> In construing a proposed limitation, if the Chair finds the purpose to be legislative, in that the intent is to restrict executive discretion to a degree that it may be fairly termed a change in policy rather than a matter of administrative detail he should sustain the point of order.

The key here, Mr. Chairman, is that if the intent is to restrict executive discretion to agree that it may be fairly termed a change in policy rather than a matter of administrative detail he should sustain the point of order.

Mr. Chairman, the fact that you are limiting here, not directing, but limiting the authority to the last 2 months how much may be spent takes away the discretionary authority of the Executive which might be needed in this case. It clearly is more than an administrative detail when you limit and you take away the right of the Executive to use the funds prudently, to take advantage of saving money for the Executive, which we all should be interested in, and I certainly am, too; but Mr. Chairman, rule 843 provides that you cannot take away that discretionary authority of the Executive.

This attempt in this amendment does take that discretionary authority to save money, to wisely allocate money prudently and it takes away, I think, authority that we rightfully should keep with the Executive, that you can accumulate funds and spend them in the last quarter if it is to the advantage of the taxpayer and the Executive.

Mr. Chairman, this clearly is in violation of the rules of the House.

THE CHAIRMAN: Does the gentleman from Virginia desire to be heard?

MR. HARRIS: I do, Mr. Chairman.

Mr. Chairman, let me first address the last point, probably because it is the weakest that the gentleman has made with respect to his point of order.

With respect to the discretion that we are in any way limiting the President, we cannot limit the discretion which we have not given the President directly through legislation. There is no discretion with regard to legislation that we have overtly legislated and given to the President.

Mr. Chairman, section 665(c)(3) of title 31 of the United States Code, which states the following:

> Any appropriation subject to appointment shall be distributed as may be deemed appropriate by the officers designated in subsection (d) of this section to make apportionments and reapportionments.

Clearly grants agency budget officers the discretionary authority to appor-

tion the funds in a manner they deem appropriate. My amendment would not interfere with this authority to apportion funds. On the contrary, my amendment reaffirms this section of the United States Code, as Deschler's Procedures, in the U.S. House of Representatives, chapter 26, section 1.8, states:

> The provision of the rule forbidding in any general appropriation bill a "provision changing existing law" is construed to mean the enactment of law where none exists, or a proposition for repeal of existing law. Existing law may be repeated verbatim in an appropriation bill, but the slightest change of the text causes it to be ruled out.

My amendment, Mr. Chairman, as the Chair will note, specifically restates by reference the existing law, which in no way gives discretion as to spending, but gives discretion as to apportionment.

Mr. Chairman, as the Chair knows, the budget execution cycle has many steps. Whereas the Chair's earlier ruling related to the executive branch authority to apportion, my amendment addresses the obligation rate of funds appropriated under the fact. As OMB circular No. A–34 (July 15, 1976) titled "Budget Execution" explains:

> Apportionment is a distribution made by OMB.
>
> Obligations are amounts of orders placed, contracts awarded, services received, and similar transactions.

Mr. Chairman, my amendment proposes some additional duties, but only a very minimal additional duty upon the executive branch.

Deschler's chapter 26, section 11.1 says:

> The application of any limitation on an appropriation bill places some minimal extra duties on Federal officials, who, if nothing else, must determine whether a particular use of funds falls within that prohibited by the limitation.

The fact of the matter, Mr. Chairman, is that this is a very carefully drawn limitation on appropriations. It is consistent with a number of previous rulings of the Chair.

Mr. Chairman, I would urge my colleague to withdraw his point of order, because even a narrow interpretation of the rules will not satisfy the other body on this. The other body has made it clear that this restriction will go into the appropriation bill.

I think it is a shame, after this House has voted this past week 350 to 52, that it not go ahead and enact this type of provision on the HUD bill. I think the Members want to vote for it. I think the Members should be permitted to vote for it. I think it is a shame to just allow the other body to take the initiative on what I think is an extraordinarily important reform in our budgetary process.

THE CHAIRMAN: Does the gentleman from Indiana desire to be heard further?

MR. MYERS of Indiana: I do, Mr. Chairman.

The citation cited by the gentleman from Virginia points to the fact that this amendment, if adopted, would cause the Executive to unwisely allocate and spend money in quarters earlier or in the year earlier when it might not be wise to spend it. This amendment, while the intent I do not disagree with, the spirit that would be carried out would cause the Executive

to allocate and spend money unwisely because it was forced by this amendment to allocate a portion according to this. But the amendment does not do what the gentleman aspires for it to do.

THE CHAIRMAN: Does the gentleman from Texas desire to be heard?

If not, the Chair is prepared to rule based upon the arguments made with respect to the point of order.

In the first instance, the Chair would observe that it is not the duty of the Chair or the authority of the Chair to rule on the wisdom or the legislative effect of amendments.

Second, the Chair will observe that the gentleman from Virginia, in the way in which his amendment has been drafted, satisfies the requirements of the Apportionment Act, which was the subject of a prior ruling of the Chair in connection with another piece of legislation.

The Chair agrees with the basic characterization made by the gentleman from Indiana that the precedents of the House relating to limitations on general appropriation bills stand for the proposition that a limitation to be in order must apply to a specific purpose, or object, or amount of appropriation. The doctrine of limitations on a general appropriation bill has emerged over the years from rulings of Chairmen of the Committee of the Whole, and is not stated in clause 2, rule XXI itself as an exception from the prohibition against inclusion of provisions which "change existing law." Thus the Chair must be guided by the most persuasive body of precedent made known to him in determining whether the amendment offered by the gentleman from Virginia (Mr. Harris) "changes existing law." Under the precedents in Deschler's Procedure, chapter 26, section 1.12, the proponent of an amendment has the burden of proving that the amendment does not change existing law.

The Chair feels that the basic question addressed by the point of order is as follows: Does the absence in the precedents of the House of any ruling holding in order an amendment which attempts to restrict not the purpose or object or amount of appropriation, but to limit the timing of the availability of funds within the period otherwise covered by the bill require the Chair to conclude that such an amendment is not within the permissible class of amendments held in order as limitations? The precedents require the Chair to strictly interpret clause 2, rule XXI, and where language is susceptible to more than one interpretation, it is incumbent upon proponent of the language to show that it is not in violation of the rule (Deschler's chapter 25, section 6.3).

In essence, the Chair is reluctant, based upon arguments submitted to him, to expand the doctrine of limitations on general appropriation bills to permit negative restrictions on the use of funds which go beyond the amount, purpose, or object of an appropriation, and the Chair therefore and accordingly sustains the point of order.

Burden of Proving Authorization for Appropriation

§ 8.11 The burden of proof to cite the authorization to sustain an appropriation for a

project is on the proponent of the amendment.

On Oct. 29, 1991,[9] when an amendment dealing with an environmental study was offered to the dire emergency appropriation bill in 1991, a point of order against the amendment was sustained where no authorization was cited.

AMENDMENT OFFERED BY MR. GILCHREST

The Clerk read as follows:

Amendment offered by Mr. Gilchrest: Page 10, after line 20, insert the following new paragraph:

ENVIRONMENTAL PROTECTION AGENCY

STUDY OF WETLANDS DELINEATION

For necessary expenses for entering into an arrangement with the National Academy of Sciences to conduct a study to examine the scientific basis for methods used in identifying and delineating wetlands (including the Federal manual for Identifying and Delineating Jurisdictional Wetlands, published January 10, 1989, revisions to such manual proposed by the Environmental Protection Agency on August 14, 1991, and previous manuals and methodologies), $500,000.

MR. [WAYNE T.] GILCHREST [of Maryland] (during the reading): Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

THE CHAIRMAN:[10] Is there objection to the request of the gentleman from Maryland?

There was no objection.

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Chairman, I reserve a point of order against the amendment.

MR. [JAMES A.] HAYES of Louisiana: Mr. Chairman, I reserve a point of order, as well, against the amendment.

MR. GILCHREST: . . . The point of order is not well taken.

Mr. Chairman, just before I came to the House floor, someone told me, and it was an interest group, that wetlands should not be a science issue. It should be a political issue. Well, I take issue with that statement. We need the science. We need wetlands determination. We need a policy based on fact, not a policy based on politics.

POINT OF ORDER

THE CHAIRMAN: Does the gentleman from Louisiana [Mr. Hayes] insist on his point of order?

MR. HAYES of Louisiana: Mr. Chairman, yes, I do.

I make a point of order against the amendment, because it proposes to change existing law, constituting legislation in an appropriation bill, therefore, violating clause 2 of rule XXI, the rule which states in pertinent part that no amendment to a general appropriation bill shall be in order if changing existing law.

This amendment imposes additional duties. It, in fact, instructs the EPA to make and enter into an arrangement with the National Academy of Sciences all of this to include, by specific ref-

9. 137 CONG. REC. 28791, 28792, 28802, 102d Cong. 1st Sess.

10. Gerry E. Studds (Mass.).

erence of this amendment, the Federal manual for identifying and delineating jurisdictional wetlands, all of which comes under section 404 of the Clean Water Act, the appropriate jurisdiction of which belongs with the Committee on Merchant Marine and Fisheries and the Committee on Public Works and Transportation.

There is no doubt but that this is, in fact, imposing legislative intent upon an appropriation bill, and I ask for a ruling from the Chair.

THE CHAIRMAN: Does the gentleman from Maryland [Mr. Gilchrest] wish to be heard on the point of order.

MR. GILCHREST: Mr. Chairman, we are not legislating an appropriation.

MR. HAYES of Louisiana: Mr. Chairman, I have a question for the gentleman.

The question would be: Is it not that the exact language says that the Environmental Protection Agency will have the expenses for entering into an arrangement with the National Academy of Sciences? I am reading directly from the amendment. Therefore, this is an appropriation of $500,000 for the express and sole purpose of entering into an arrangement with the National Academy of Sciences which is, in fact, legislating on an appropriation bill and imposing the additional duties on the EPA, duties which are not in existence now.

MR. GILCHREST: We are appropriating money for a study. We are not legislating here.

MR. HAYES of Louisiana: Mr. Chairman, I would just proceed to ask the Chair for a ruling.

THE CHAIRMAN: The Chair is prepared to rule.

The Chair is unaware of any current statutory authorization for the activities called for in the amendment and, consequently, the reasons stated by the gentleman from Louisiana constitute a violation of clause 2, rule XXI.

The Chair sustains the point of order. . . .

AMENDMENT OFFERED BY MR. GILCHREST

MR. GILCHREST: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Gilchrest: Page 15, after line 20, insert the following new chapter:
>
> STUDY OF WETLANDS DELINEATION
>
> For necessary expenses for entering into an arrangement with the National Academy of Sciences to conduct a study to examine the scientific basis for methods used in identifying and delineating wetlands, for purposes of the conservation of fish and wildlife resources and their habitat, as authorized by 16 U.S.C., 742f. $500,000.

MR. GILCHREST: Mr. Chairman, this is the same amendment that I offered earlier. We have cleared up some of the problems with the amendment. The purpose of the amendment is for a study, I am asking for this study for the purposes of conservation, fish and wildlife resources, and their habitat.

Chair's Ability To Look Behind Proponents Characterization of Motion

§ 8.12 Where a motion to concur in a Senate amendment with an amendment was of-

fered as "preferential," the Speaker Pro Tempore, without the benefit of a point of order from the floor, on his own initiative declared that the motion did not in fact qualify for that status and recognized another Member to offer a motion to concur with an amendment. On appeal, the Chair was sustained.

On July 2, 1980,(11) the House had under consideration a series of amendments reported in disagreement from conference. A motion offered by Mr. Jamie L. Whitten, of Mississippi, to disagree with a particular Senate amendment was pending. The manager of the conference report, Mr. Clarence D. Long, of Maryland, then offered a preferential motion to concur in the Senate amendment with a further amendment. This motion was also rejected. At this point, Mr. Robert E. Bauman, of Maryland, offered a "preferential" motion to concur with an amendment. The proceedings following the rejection of Mr. Long's motion were then as indicated below.

PREFERENTIAL MOTION OFFERED BY MR. BAUMAN

MR. BAUMAN: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Bauman moves to recede and concur in the amendment of the Senate, (No. 95) with an amendment as follows: In lieu of the matter stricken and inserted by said amendment insert the following:

CHAPTER VI

FOREIGN OPERATIONS

FUNDS APPROPRIATED TO THE PRESIDENT

INTERNATIONAL DISASTER ASSISTANCE

For an additional amount to carry out the provisions of Section 491 of the Foreign Assistance Act of 1961, as amended, $43,000,000 to remain available until expended.

PAYMENT TO THE FOREIGN SERVICE RETIREMENT AND DISABILITY FUND

For an additional amount for "Payment to the Foreign Service Retirement and Disability Fund", $1,020,000.

OPERATING EXPENSES

For an additional amount for "Operating Expenses of the Agency for International Development", $2,000,000, to remain available until expended.

MR. BAUMAN (during the reading): Mr. Speaker, that happens to be the end of the motion. I am not sure why the gentleman is reading further. That is the end of the motion I sent to the desk.

PARLIAMENTARY INQUIRY

MR. [ALLEN E.] ERTEL [of Pennsylvania]: Mr. Speaker, I have a parliamentary inquiry.

11. 126 CONG. REC. 18357, 18359–61, 96th Cong. 2d Sess.

THE SPEAKER PRO TEMPORE:[12] The gentleman will state his parliamentary inquiry.

MR. ERTEL: Mr. Speaker, how is this particular amendment a preferential motion?

THE SPEAKER PRO TEMPORE: The gentleman rose and was recognized to offer a preferential motion. The Clerk has not completed the reading of the motion.

MR. BAUMAN: The gentleman from Maryland would advise the Speaker that the Clerk has completed reading the motion that I sent to the desk. I am not sure what the Clerk is now reading.

THE SPEAKER PRO TEMPORE: Has the Clerk finished reading the motion?

The Clerk will rereport the motion.

MR. ERTEL (during the reading): Mr. Speaker, I reserve a point of order.

THE SPEAKER PRO TEMPORE: The gentleman from Pennsylvania reserves a point of order.

PARLIAMENTARY INQUIRIES

MR. ERTEL: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. ERTEL: Mr. Speaker, inasmuch as the motion was partially read before, how is this a preferential motion which the gentleman has been recognized for; on what basis?

THE SPEAKER PRO TEMPORE: The Long amendment having been to concur with an amendment and being defeated, another motion to concur with an amendment is a preferential motion.

MR. ERTEL: Mr. Speaker, I have an additional parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman from Pennsylvania will state his additional parliamentary inquiry.

MR. ERTEL: Mr. Speaker, did we not though vote to recede and concur in the Senate amendment previously?

THE SPEAKER PRO TEMPORE: The House has, on reconsideration refused to concur in the Senate amendment No. 95 with an amendment.

The Clerk will continue to read the motion.

The Clerk read as follows:

> Mr. Bauman moves to concur in the amendment of the Senate (No. 95) with an amendment as follows: In lieu of the matter stricken and inserted by said amendment insert the following:
>
> CHAPTER VI
>
> FOREIGN OPERATIONS
>
> FUNDS APPROPRIATED TO THE PRESIDENT
>
> INTERNATIONAL DISASTER ASSISTANCE
>
> For an additional amount to carry out the provisions of Section 491 of the Foreign Assistance Act of 1961, as amended, $43,000,000 to remain available until expended.
>
> PAYMENT TO THE FOREIGN SERVICE RETIREMENT AND DISABILITY FUND
>
> For an additional amount for "Payment to the Foreign Service Retirement and Disability Fund", $1,020,000.
>
> OPERATING EXPENSES
>
> For an additional amount for "Operating Expenses of the Agency for International Development",

12. Paul Simon (Ill.).

$2,000,000, to remain available until expended. . . .

THE SPEAKER PRO TEMPORE: The gentleman from Maryland is recognized.

PARLIAMENTARY INQUIRY

MR. BAUMAN: Mr. Speaker, under the rules, does not the gentleman from Mississippi have the time? I would like for him to yield to me, but I believe he has the time.

MR. LONG of Maryland: Mr. Speaker, I have a preferential motion.

MR. BAUMAN: Mr. Speaker, I have been recognized, I believe.

MR. LONG of Maryland: Mr. Speaker, I was on my feet.

POINT OF ORDER

MR. BAUMAN: Mr. Speaker, a point of order.

THE SPEAKER PRO TEMPORE: The gentleman will state the point of order.

MR. BAUMAN: Mr. Speaker, I have the floor and I do not yield.

MR. LONG of Maryland: Mr. Speaker, I was on my feet for a preferential motion.

THE SPEAKER PRO TEMPORE: On this motion the gentleman from Maryland (Mr. Bauman) has the time.

MR. BAUMAN: Mr. Speaker, I would like to take my time at this point.

THE SPEAKER PRO TEMPORE: The gentleman from Maryland (Mr. Bauman) is recognized.

MR. BAUMAN: Mr. Speaker, I do not want to complicate an already complicated situation. The motion which I have just offered, and the Members should at least try and understand it because we are apparently going to have to vote on it, in essence returns the House to the position that we went to the conference with on the foreign aid issue. It provides amounts of money for three funds that the administration informed the House was necessary for inclusion in the supplemental appropriation bill. It does not include any of the funding which was added by the other body and, therefore, amounts to roughly about $46 million. . . .

Mr. Speaker, for purposes of debate only I yield to the gentleman from New York (Mr. McEwen).

MR. [ROBERT C.] MCEWEN [of New York]: Mr. Speaker, I thank the gentleman for yielding.

THE SPEAKER PRO TEMPORE: For what purpose does the gentleman from Massachusetts rise?

MR. [THOMAS P.] O'NEILL [Jr., of Massachusetts]: Mr. Speaker, in view of the fact that the gentleman from Maryland did not offer a preferential motion, I offer a preferential motion that is at the desk.

MR. BAUMAN: Mr. Speaker, I did not yield to the gentleman to offer a motion.

MR. O'NEILL: I was recognized.

MR. BAUMAN: Well, I did not yield for that purpose, Mr. Speaker. I control the time, do I not?

THE SPEAKER PRO TEMPORE: The gentleman from Maryland (Mr. Bauman) has 30 minutes, the majority side has 30 minutes.

Does the gentleman from Maryland wish to use more time?

MR. BAUMAN: I do and I was in the course of using the time when I was interrupted. I do not believe I can be interrupted unless I yield.

THE SPEAKER PRO TEMPORE: The gentleman from Maryland may proceed.

MR. BAUMAN: I do not yield for that purpose. I yield for debate only to the——

MR. O'NEILL: I want the House to know that I reserve my right and before the previous question is put, I will offer for a preferential motion.

MR. BAUMAN: Mr. Speaker, I yield to the gentleman from New York for the purpose of debate only. . . .

My parliamentary inquiry is that the Chair stated a moment ago that the time on a preferential motion to concur with an amendment is divided between the majority and the minority. Is it not controlled by the maker of the motion? Only amendments in disagreement are divided.

THE SPEAKER PRO TEMPORE: The practice of the House is clearly on a motion of this type after an initial motion has been rejected on an amendment reported from conference in disagreement that the time is divided between the majority and the minority parties.

MR. BAUMAN: The second question I have is, has not the gentleman from Maryland made a preferential motion which is now pending?

THE SPEAKER PRO TEMPORE: The gentleman from Maryland made a motion which was in form a preferential motion. Upon examination by the Chair, it is in fact a motion to insist upon the original House position rather than a motion to amend the Senate amendment.

MR. BAUMAN: A further parliamentary inquiry. The House's previous action on this amendment was a vote to recede from the position of the House. At that point——

THE SPEAKER PRO TEMPORE: If the Chair could—the House has not voted to reconsider the motion to recede——

MR. BAUMAN: Precisely. That is what the gentleman from Maryland is observing, that the House has voted to recede from its position. At that point a preferential motion to concur with an amendment is in order. That is what the gentleman from Maryland has offered.

THE SPEAKER PRO TEMPORE: What the House has done is to recede from its initial disagreement, not from the House position.

MR. BAUMAN: Well, is not the gentleman from Maryland's motion a preferential motion under the rule?

THE SPEAKER PRO TEMPORE: In form it is but upon examination it is in fact a motion to insist upon the House position.

MR. BAUMAN: Well, does not the Chair have to be subjected to a point of order at an appropriate time in order to make that ruling? Does the Chair on its own inquire behind the form of motion?

THE SPEAKER PRO TEMPORE: The Chair is responding to a parliamentary inquiry of the gentleman from Maryland.

MR. BAUMAN: Well, but the Chair made a statement a few moments ago, unsolicited by anyone that my motion was not a preferential motion. This gentleman would like to ask upon what authority the Chair is able to rule a preferential motion offered in proper form is nonpreferential when no one has raised the issue.

THE SPEAKER PRO TEMPORE: The Chair has not ruled out the motion of

the gentleman from Maryland. It is still pending. The parliamentary inquiry was whether it was a preferential motion.

MR. BAUMAN: Mr. Speaker, further using my time on parliamentary inquiry of the Chair, who controls the preferential motion on the previous question under these circumstances?

THE SPEAKER PRO TEMPORE: Is the gentleman asking if another motion is made?

MR. BAUMAN: I am asking the Chair, under the parliamentary inquiry, who controls the preferential motion of the previous question? Who may move the previous question on this motion?

THE SPEAKER PRO TEMPORE: If a motion is privileged it may be offered by any Member of the House.

MR. BAUMAN: Mr. Speaker, I move the previous question on the motion.

THE SPEAKER PRO TEMPORE: For what purpose does the gentleman from Massachusetts (Mr. O'Neill) seek recognition?

PREFERENTIAL MOTION OFFERED BY MR. O'NEILL

MR. O'NEILL: Mr. Speaker, I offer a preferential motion.

MR. BAUMAN: Mr. Speaker, a point of order. I moved the previous question on the pending motion.

THE SPEAKER PRO TEMPORE: The motion for the previous question does not rule out a preferential motion, if moved while time is remaining to the opposite party. The previous question is not yet in order.

The Clerk will read the preferential motion.

The Clerk read as follows:

> Mr. O'Neill moves that the House concur in the amendment of Senate numbered 95 with an amendment as follows:
>
> In lieu of the matter deleted and inserted by said amendment, insert the following:
>
> FUNDS APPROPRIATED TO THE PRESIDENT
>
> INTERNATIONAL DISASTER ASSISTANCE
>
> For an additional amount to carry out the provisions of section 491 of the Foreign Assistance Act of 1961, as amended, $43,000,000 to remain available until expended.
>
> DISABILITY FUND
>
> For an additional amount for "Payment to the Foreign Service Retirement and Disability Fund," $1,020,000.
>
> OPERATING EXPENSES
>
> For an additional amount for "Operating Expenses of the Agency for International Development," $2,000,000, to remain available until expended.
>
> ECONOMIC SUPPORT FUND
>
> For an additional amount of $80,000,000 for necessary expenses to carry out the provisions of sections 531 through 535, provided that these funds shall not be available for obligation or expenditure until October 1, 1980.

POINT OF ORDER

MR. BAUMAN: Mr. Speaker, I make a point of order against the motion.

THE SPEAKER PRO TEMPORE: The gentleman will state his point of order.

MR. BAUMAN: Mr. Speaker, I make a point of order that this motion is not a preferential motion. It is, in fact, an amendment to the pending motion of the gentleman from Maryland, which sought to concur in the Senate amend-

ment with an amendment. This is simply another motion seeking to concur in the Senate amendment with a slightly different amendment, and therefore it has no preference over my pending motion.

I make a point of order against it on that ground.

The Chair, stating that the motion to concur with an amendment took precedence over a motion to insist on the House position, overruled the point of order. Mr. Bauman then made another point of order as indicated below:

MR. BAUMAN: A point of order, Mr. Speaker.

The gentleman from Maryland has offered a motion to concur in the amendment of the Senate with an amendment, and now another motion to concur in the amendment of the Senate with an amendment is being offered. That additional motion is not in order at this point.

THE SPEAKER PRO TEMPORE: The gentleman from Maryland has offered an amendment which in form was a motion to concur with an amendment. In fact, it is a motion to insist on the original House language.

MR. BAUMAN: I make a point of order against the pending motion by the gentleman from Massachusetts (Mr. O'Neill) that it is not preferential because it is, in form, simply a motion to insist on the House position and is not, in fact, a preferential motion. If my motion is not [in] order, his is not either.

THE SPEAKER PRO TEMPORE: The gentleman from Maryland is not correct. The point is not well taken.

MR. BAUMAN: Mr. Speaker, I appeal the ruling of the Chair.

If that is the way you are going to play the game, let us fight it to the end.

THE SPEAKER PRO TEMPORE: The gentleman appeals the ruling of the Chair. The question is, shall the Chair's decision stand as the judgment of the Committee.

MOTION TO TABLE OFFERED BY MR. BOLLING

MR. [RICHARD] BOLLING [of Missouri]: Mr. Speaker, I move to lay the appeal from the Chair on the table.

MR. BAUMAN: And that the motion be reduced to writing.

MR. BOLLING: It is at the desk. It is at the desk.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion.

The Clerk read as follows:

> Mr. Bolling moves to lay the appeal on the table.

THE SPEAKER PRO TEMPORE: The question is on the motion to table.

The question was taken; and the Speaker Pro Tempore announced that the ayes appeared to have it.

MR. BAUMAN: Mr. Speaker, on that I demand the yeas and nays, so that we can go on record on the fairness in this House.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 222, nays 140, answered "present" 1, not voting 70, as follows: . . .

So the motion to table was agreed to.

The result of the vote was announced as above recorded.

THE SPEAKER PRO TEMPORE: The gentleman from Massachusetts (Mr.

O'Neill) is recognized in support of his preferential motion.

Chair's Role in Clarifying Amendment

§ 8.13 In attempting to construe an ambiguous amendment, the Chair may inquire of the author the meaning of certain language therein, and then rely on those responses, and additional debate, in rendering a decision on a point of order.

On Oct. 29, 1991,[13] Chairman Gerry E. Studds, of Massachusetts, presiding over the dire emergency appropriation bill, 1991, was faced with an amendment and a point of order that it was legislation in violation of Rule XXI clause 2. The Chair elicited some debate on the matter to help clarify the meaning of the amendment.

AMENDMENT OFFERED BY MR. BOEHNER

MR. [JOHN A.] BOEHNER [of Ohio]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Boehner: At the appropriate place in the bill, add the following new chapter:
>
> CHAPTER—LEGISLATIVE BRANCH
>
> HOUSE OF REPRESENTATIVES COMMITTEE ON HOUSE ADMINISTRATION—HOUSE INFORMATION SYSTEMS
>
> For an additional amount for "Committee on House Administration, House Information Systems", $1.00 to cancel the contract with Aristotle Industries for the CD–ROM Voter Registration Lists project.

MR. [VIC] FAZIO [of California]: Mr. Chairman, I reserve a point of order on the gentleman's amendment. . . .

THE CHAIRMAN: The gentleman will state his point of order.

MR. FAZIO: Mr. Chairman, I believe this language is legislation on an appropriation bill. It seems to direct that the Committee on House Administration should cancel a contract, and, if that is the thrust of the amendment, and that is the Chairman's interpretation of it, I would suggest that this is language that should be removed.

Mr. Chairman, I object and insist on my point of order.

THE CHAIRMAN: Does the gentleman from Ohio wish to be heard on the point of order? . . .

The Chair would inquire of the author of the amendment whether it is his intention and understanding with respect to his amendment that it directs the Committee on House Administration to cancel the contract.

MR. BOEHNER: That is correct.

THE CHAIRMAN: This is his intention?

MR. BOEHNER: Yes. . . .

THE CHAIRMAN: Does the gentleman from Pennsylvania [Mr. Walker] wish to be heard on the point of order?

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Chairman, as I read the amendment, the amendment reads that House Administration is given $1 to cancel the contract of Aristotle Industries. This is not an absolute mandate upon the committee. That $1 may be sufficient to do that job, it may not

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13. 137 CONG. REC. 28818, 28819, 102d Cong. 1st Sess.

be, so it seems to me the language of the amendment is such that there is an optional nature to it. It is not a mandate under the terms of the amendment and so, therefore, it should be in order in the House for offering before the House.

MR. FAZIO: Mr. Chairman, may I be heard further on the point of order?

THE CHAIRMAN: The Chair will hear the gentleman from California [Mr. Fazio].

MR. FAZIO: Mr. Chairman, I think the author of the amendment has stated his purpose. He said it did direct the committee to cancel the contract. Others who have attempted to intervene and reinterpret this statement have no standing. The gentleman who offered the amendment is accurate in his purpose. He stated it very clearly, and I would further insist that this point of order be upheld.

THE CHAIRMAN: The Chair will inquire of the author of the amendment as to whether or not he intends to direct the committee to cancel the contract.

MR. BOEHNER: My intent, Mr. Chairman, is that the contract be canceled. That is my intent. We do not direct that, though, in the amendment.

THE CHAIRMAN: The Chair is prepared to rule.

Under existing law and procedures the Committee on House Administration is clearly authorized to cancel contracts into which it has entered on behalf of the House. Thus the funds in the amendment are authorized by law. Whether the amendment constitutes legislation depend on whether the amendment directs the committee to do that which it merely has discretion to do or not to do, the amendment on its face does not state such a direction, and that is why the Chair inquired twice of the author of the amendment as to his intention.

The Chair has no alternative other than to rely on the more recent assurance of the gentleman from Ohio [Mr. Boehner] that it is not his intention to direct the committee, but merely to appropriate funds authorized by law, and, consequently, the point of order is overruled.

Basis for Rulings on Points of Order Under Budget Act

§ 8.14 Under some provisions of the Congressional Budget Act, the Chair must be guided in his rulings by estimates of costs provided by the Committee on the Budget (see sections 302 and 311); in other cases, particularly where a point of order is raised under section 303 of the Act, the Chair's judgment is shaped by the text of the bill and not bound by Budget Committee estimates.

Many factors help shape the Chair's decision on a point of order: the rule under which the point of order is brought, its legislative history, precedents, and prior interpretations of the rule in question. The Congressional Budget Act, adopted by the House as an exercise of its rulemaking

authority, specifies in several instances that estimates furnished by the Committee on the Budget are dispositive when a question is raised about the cost of legislation. Language of the following type is found in several sections of the Act: "For purposes of this section, levels of new budget authority, spending authority . . . outlays . . . for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget. . .".

On Mar. 26, 1992,[14] during consideration of the Higher Education Amendments of 1992, an amendment was offered by Mr. Scott Klug, of Wisconsin, which had the effect of enlarging the class of borrowers under student loan provisions. The Committee on the Budget had told Mr. Klug that there were no costs associated with his amendment. The Chair held to the contrary and sustained a point of order raised under section 303 of the Act.

THE CHAIRMAN:[15] The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. Klug: Page 169, line 23, and page 170, line 16, strike "and" and on page 170 after line 5 and after line 23, insert the following new clauses:

"(iii) not in excess of 3 years during which the borrower is engaged as a full-time teacher in a public or nonprofit private elementary or secondary school in a teacher shortage area established by the Secretary pursuant to paragraph (4) of this subsection;

Page 177, strike lines 13 through 16 and redesignate the succeeding subsections accordingly.

Page 177, line 18, strike "428(b)(4) of the Act as redesignated)" and insert "428(b)(5) of the Act".

Page 178, line 4, and page 179, lines 14 and 23, redesignate paragraphs (6), (7), and (8) as paragraphs (5), (6), and (7), respectively.

MR. KLUG (during the reading): Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

THE CHAIRMAN: Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

POINT OF ORDER

MR. [WILLIAM D.] FORD of Michigan: Mr. Chairman, I am constrained to and must make a point of order on this amendment.

THE CHAIRMAN: The gentleman will state his point of order.

MR. FORD of Michigan: Mr. Chairman, I would have reserved a point of order, but what just happened when we tried to do that is an illustration that we will never get finished here if we use the reservation of a point of order for unlimited debate. For that reason I make the point of order without a reservation.

Mr. Chairman, in section 303(a) of the Congressional Budget Act it is not in order to consider any measure

14. 138 CONG. REC. 7185, 7186, 102d Cong. 2d Sess.

15. Don J. Pease (Ohio).

which creates entitlement authority or directs spending authority first effective in the fiscal year prior to the budget resolution for that fiscal year.

The amendment would require the Government to pay an interest subsidy for an extended period of time for individuals not otherwise subsidized by the bill.

The amendment expands the class of individuals entitled to an interest subsidy in repayment of their student loans. Consequently, the amendment establishes a beneficiary and a right to the benefit in the subsidy satisfying the definition of new entitlement authority under the Budget Act.

While the Congressional Budget Office did not credit the committee with savings for changes in the deferment terms of the student loan programs in the act, the present amendment expands the class of individuals entitled to the economic benefit of loan principal repayment deferments and interest subsidies. . . .

THE CHAIRMAN: Does the gentleman from Wisconsin wish to be heard on the point of order?

MR. KLUG: Yes, very briefly, I might add, Mr. Chairman.

THE CHAIRMAN: The gentleman may proceed.

MR. KLUG: First of all, Mr. Chairman, this amendment, like the amendment offered by my colleague, the gentlewoman from Hawaii just a few minutes ago, attempts to expand the higher education authority to also allow deferments for teachers involved in teacher shortage areas. In fact, right now, 34 States have made application to the Federal Government because of shortages of teachers, much like the shortage of physicians in rural areas across the United States.

I accept the gentleman's point of order, but let me tell you, there is some frustration that I feel in that we in good faith went to the Congressional Budget Office last week and asked for an analysis, only to have now today an indication that the CBO estimate no longer holds. They told us there would be no additional expense. We come to the floor and suddenly find out that in this case the Congressional Budget Office, which happens to support our position, no longer holds.

I think that is a very dangerous precedent. If we are going to ask the CBO to do an analysis, then my sense is the CBO analysis should be the rule of law on this floor.

THE CHAIRMAN: Does anyone else wish to be heard on the point of order?

MR. [ROBERT S.] WALKER [of Pennsylvania]: Yes, Mr. Chairman.

THE CHAIRMAN: The gentleman from Pennsylvania may proceed.

MR. WALKER: Mr. Chairman, I am very troubled with what is happening here. In previous iterations of this kind of challenge, the Parliamentarians have ruled that the Congressional Budget Office determinations with regard to the cost of an amendment would in fact hold.

Now under this particular challenge, we have the Parliamentarians overruling the Congressional Budget Office in what the Congressional Budget Office feels is the true nature of the situation. As I understand it, the Congressional Budget Office has said that the category of people that the gentleman from Wisconsin [Mr. Klug] wishes to cover in his amendment were already

assumed by them to be included, and so therefore there is no cost involved in extending this particular benefit. . . .

MR. FORD of Michigan: Mr. Speaker, may I be heard further on the point of order?

THE CHAIRMAN: The gentleman from Michigan may proceed.

MR. FORD of Michigan: Mr. Chairman, the gentleman from Pennsylvania apparently was not on the floor when the previous ruling was made by the Chair on precisely the same point of order, and the point of order was raised from that side of the aisle. . . .

THE CHAIRMAN: Does anyone else desire to be heard on the point of order? If not, the Chair is prepared to rule.

The Chair would observe that the fact that CBO assumed the inclusion of these borrowers in its estimating model is not dispositive to the question of order under section 303. Moreover, under section 303 the Chair must be guided by the text and, unlike sections 302 and 311, is not required to accept Budget Committee estimates as conclusive.

Having said that, the Chair would point out that the issue here is identical to what it was in the amendment raised by the gentlewoman from Hawaii, and based on the same reasoning the Chair sustains the point of order.

Burden of Proof on Points of Order

§ 8.15 In response to most points of order against provisions in an appropriation bill or against amendments, the burden is on those supporting the provision or amendment to prove that it does not violate the pertinent rule; but where a limitation of funds amendment is challenged as being a "tax provision" in violation of Rule XXI clause 5(b), the person advocating the point of order must show the inevitability of tax consequences in or- der to successfully press the point of order.

The proceedings of June 18, 1991,[16] show the difficulty of carrying the burden of proof where a point of order is raised under rule XXI clause 5(b), especially where the tax measure is a provision in or amendment to an appropriation bill.

The Clerk read as follows:

Amendment offered by Mr. Obey: Page 13, line 7, insert before the period the following:

: Provided further, That additional amounts above fiscal year 1991 levels for the information reporting program shall be used instead for the examination of the tax returns of high-income and high-asset taxpayers.

POINT OF ORDER

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[17] The gentleman will state his point of order.

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16. 137 CONG. REC. 15189–91, 102d Cong. 1st Sess.
17. Gerry E. Studds (Mass.).

MR. WALKER: Mr. Chairman, I make a point of order against the amendment of the gentleman from Wisconsin on grounds that it violates clause 5(b) of House rule XXI and ask to be heard on my point of order.

THE CHAIRMAN: The gentleman will state his point of order.

MR. WALKER: Mr. Chairman, clause 5(b) of rule XXI states at the relevant part that, and I quote:

No amendment in the House or proposed by the Senate carrying a tax or tariff measure [shall] be in order during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction.

The proposed amendment would transfer the increased funds in the bill over last year's appropriation for the Information Reporting Program to be used instead for the examination of the tax returns of high-income and high-asset taxpayers.

It is my contention, Mr. Chairman, that under the precedents surrounding clause 5(b) of rule XXI, this amendment constitutes a tax measure to a bill not reported by the committee having jurisdiction over tax measures-the House Ways and Means Committee.

In this regard, I cite the footnote at section 846(b) of the *House Rules and Manual* for the 101st Congress, and I quote:

In determining whether a limitation in a general appropriation bill constitutes a tax or tariff measure proscribed by this clause, the Chair will consider argument as to the certainty of impact on revenue collections and tax status or liability.

That particular reference was to a point of order raised on August 1, 1986, against a provision in a Treasury, Postal Service appropriations bill to prohibit the use of funds in the bill to implement certain specified Treasury regulations. Those regulations required taxpayers to maintain detailed information to substantiate the deductibility of certain expenses on their tax returns.

. . . And while new regulations could be promulgated, there would be a necessary delay in doing so, and this would, and I quote, "necessarily result in a direct loss of revenue to the Federal Treasury."

The Chair concluded that the progression of decisions under clause 5(b), rule XXI, support the proposition that a provision constitutes a tax or tariff measure, and again I quote the Chair:

> Where it can be conclusively shown that the imposition of the restriction on IRS funding for the fiscal year will effectively and inevitably either preclude the IRS from collecting revenues otherwise due and owing under provisions of the Internal Revenue Code or require collection of revenue not legally due and owing. . . .

But all we are concerned with in this point of order is whether shifting funds from the information matching system to audits will be a revenue gainer or loser in fiscal 1992. And the testimony of the IRS commissioner is that keeping that money in the Information Reporting System is more efficient and will yield a larger revenue return.

Finally, Mr. Chairman, while I think I have provided ample proof that this amendment will deprive the IRS of net revenues it would otherwise receive in the coming fiscal year, under parliamentary practice, the burden of

proof is on the proponent of the amendment to show that the amendment does not violate the rule. In other words, it is up to the gentleman from Missouri to prove that his amendment will not "inevitably preclude the IRS from collecting revenues otherwise due and owing under the provision of the Internal Revenue Code."

I therefore urge that my point of order be sustained.

THE CHAIRMAN: The proponent of the amendment is entitled to be recognized on the point of order.

MR. [DAVID R.] OBEY [of Wisconsin]: . . . There is no way to ascertain whether an audit of a taxpayer will or will not result in increased revenue or lowered revenue to the Treasury of the United States. And to suggest otherwise, I think, would be to suggest that this subcommittee could take virtually no action which would impact the rules of the IRS or any other agency that either audits or imposes fines.

THE CHAIRMAN: Does the gentleman from California [Mr. Roybal] wish to be heard on the point of order?

MR. [EDWARD R.] ROYBAL [of California]: Mr. Chairman, I just wanted to add that the rule protects this amendment. The rule states as follows:

> It shall be in order to consider the amendment printed in the report of the Committee on Rules accompanying this resolution, and all points of order against said amendment for failure to comply with the provisions of clause 2 of rule XI are hereby waived.

I ask the Chair to rule on it.

MR. WALKER: Mr. Chairman, may I be heard further on the point of order?

THE CHAIRMAN: The gentleman from Pennsylvania may be heard further.

MR. WALKER: I thank the Chair.

First of all, my point of order does not relate to clause 2 of rule XI. I am making my point of order based upon clause 5(b) of rule XXI. . . .

Finally, Mr. Chairman, I would quote from section 835 of the *House Rules and Manual* relating to points of order on appropriations bills:

> If the amendment is susceptible to more than one interpretation, it is incumbent upon the proponent to show that it is not in violation of the rule.

Moreover, it might be advisable here to apply the principle used for germaneness points of order, since clause 5(b) of rule XXI is very similar. To quote from section 594 of the manual:

> The burden of proof is on the proponent of the amendment to establish its germaneness, and where an amendment is equally susceptible to more than one interpretation, one of which will render it not germane, the Chair will rule it out of order.

I would submit in conclusion, Mr. Chairman, that even if the proponent were able to claim that his amendment is a revenue gainer rather than a net revenue loser, the existence of clear evidence to the contrary should compel the Chair to rule against the amendment on grounds that it is susceptible to more than one interpretation. . . .

THE CHAIRMAN: The Chair is prepared to rule.

Whether greater scrutiny of certain tax returns will, by the use of funds contained in this bill will, in fact, lead to a loss or a gain in tax liability and in tax collection is a matter of conjecture as was pointed out by the gentleman from Wisconsin [Mr. Obey].

The amendment itself goes only to funding in the bill. It does not necessarily result in a loss or gain of revenues, as was shown to be the case in the arguments on the points of order cited by the gentleman from Pennsylvania.

The test here is certainty and inevitability of such a tax gain or loss, and just to complete the record, the gentleman from Pennsylvania cited a ruling by Chairman Beilenson on August 1, 1986.

Let the Chair read fully from that paragraph:

> A limitation on the availability of funds for the Internal Revenue Service otherwise in order under clause 2(c), rule XXI may still be construed as a tax measure in violation of clause 5(b), rule XXI where it can be shown that the imposition of the restriction on IRS funding for the fiscal year will effectively and inevitably—

And I underline the words "effectively and inevitably,"—

> preclude the IRS from collecting revenues otherwise due and owing by law or require collection of revenue not legally due or owing.

Absent a showing of inevitable or absolutely inevitable certain effects, the test is not met with respect to funding restrictions on annual appropriation bills and the point of order is overruled.

PARLIAMENTARY INQUIRY

MR. WALKER: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. WALKER: The Chair did not refer to the rulings, however, where it is clear that the Chair is prepared to sustain points of order where the amendment is equally susceptible to more than one interpretation which clearly this particular amendment is. I did not hear the Chair rule on the point of order that I raised in that regard.

THE CHAIRMAN: The Chair will simply remind and repeat to the gentleman that in this line of precedent on funding restrictions on appropriation bills the test of inevitability of a tax increase or decrease is consistent through all the precedents. For that reason, again, the Chair rules the point of order out of order.

Under the rule, debate on this amendment and all amendments thereto shall not exceed 1 hour.

The Chair recognizes the gentleman from Wisconsin [Mr. Obey] for 5 minutes.

§ 9. Waiver

The rules of the House are enforced by points of order, usually raised by a Member calling the attention of the Chair and his colleagues to what the Member perceives to be an infraction of a rule. On some occasions, the Speaker or Member presiding will move to bring a violation of a rule before the body. The Chair will, for example, on his own initiative, call a Member to order for remarks uttered in debate which violate proper decorum.[18]

18. See §§ 9.17, 9.18, infra.